

**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: March 12, 2014

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Appeal of Administrative Fines Issued for the Operation of a Business (“The Nest” or “Have to Have It”) Without Permits at 131 California Avenue, Princeton.

County File Number: VIO 2012-00074

APPEAL

The tenant of 131 California Avenue has appealed the Notice of Determination of Fines issued by the Community Development Director in response to a violation consisting of the operation of a commercial retail business without the necessary permits (Attachment A). The appeal, included as Attachment B to this report, asserts that there is no business occurring on the property.

RECOMMENDATION

Uphold the administrative fine of \$2,600 issued by the Community Development Director on October 4, 2013 (Attachment B).

BACKGROUND

Report Prepared By: Ana Santiago, Senior Code Compliance Officer, 650/363-7832

Appellant: Melissa Manson

Owner: John M. Willis, Trust

Location: 131 California Avenue

APN: 047-022-250

Size: 7,115 sq. ft.

Existing Zoning: W/DR/CD

General Plan Designation: Light Industrial

Sphere-of-Influence: Half Moon Bay

Existing Land Use: Legal non-conforming residence

Water Supply: Coastside County Water District

Sewage Disposal: Granada Sanitary

Flood Zone: Zone X, Areas of Minimal Flooding

Environmental Evaluation: N/A

Setting: The subject site is on the corner of Yale and Broadway in Princeton, and contains a legal non-conforming residence. The driveway and yard space are used to store objects and materials that have been for sale to the public. Surrounding land uses include storage, light industrial, and residential.

Chronology:

<u>Date</u>	<u>Action</u>
July 17, 2012	- Notice of Code Violation.
August 6, 2012	- Second Notice of Code Violation.
May 23, 2013	- Notice of Preliminary Determination of Serious Violation.
October 4, 2013	- Notice of Determination of Fines.

DISCUSSION

A. KEY ISSUES

1. Permit Requirements

The subject property is located in the Coastal Zone, and is subject to the requirements of the San Mateo County Local Coastal Program (LCP), including the requirement to obtain a Coastal Development Permit (CDP) for any change in the use of land.¹ Sometime prior to July 17, 2012, the current resident of the property, Ms. Melissa Manson, opened a retail establishment known as “The Nest” or “Have to Have It” on the site, without obtaining the required CDP.

¹ Policy 1.1 of the LCP requires a Coastal Development Permit (CDP) for all development in the Coastal Zone, subject to certain exemptions. Policy 1.2 provides a definition of development that includes “the change in the density or intensity of use of land.” The San Mateo County Zoning Regulations (Chapter 20B) implement these requirements, and do not contain any CDP exemptions applicable to this case.

The property is also located within the County's Waterfront Zoning District. The types of land uses allowed within this district do not include general retail trade. Such uses may be allowed if they are determined to be compatible with the purpose of the district and secure a use permit. No use permit or CDP to conduct retail trade at this property has been applied for or obtained.

2. Code Compliance Activities

Since his election to District 3, Supervisor Horsley has convened representatives from various County departments and the Harbor District to address code compliance and public safety matters in the Princeton area. It was at one of these meetings, in early 2012, that the Planning and Building Department first became aware that a business had been established on the site. Concerns were expressed by the Sheriff regarding parking and circulation, and by the Fire Department regarding on-site fire safety.

Code Compliance Officers from the Planning and Building Department subsequently confirmed the presence of the business on the site and issued Notices of Code Violation to the property owner on July 17, 2012 (Attachment C), and on August 6, 2012 (Attachment D). These notices informed the property owner that he had until August 17, 2012, to correct the violation by ceasing the commercial use and cleaning up the site. On July 30, 2012, a representative for the property owner and business owner, Mr. Douglas Snow, came in to the Planning Department to discuss the matter, and was informed that a CDP and a use permit were required to operate the business.

Subsequent to that meeting, Mr. Snow and Ms. Manson came in to the Planning and Building Department on numerous occasions to meet with various members of the Planning and Building Department staff, including the Community Development Director and his Deputy. At these meetings, Mr. Snow and Ms. Manson indicated that they felt that they were being treated unfairly because they were aware of other businesses that were operating in the area without the proper use permits. The Department's response to these concerns was that the potential presence of other violations does not negate the need for them to obtain permits.

Mr. Snow and Ms. Manson also complained about the way in which the violation was brought to the Department's attention. Because the case was opened as a result of information presented to the Planning and Building Department by staff from other departments, they contend that the Department has acted in a manner that is inconsistent with its compliant based system. The Department's response is that information presented by the Sheriff and/or Fire Departments can provide valid grounds for opening a code compliance investigation. Moreover, there is nothing in the County's

Code or Regulations that prevents the Community Development Director from taking enforcement action when he or she determines that such action is necessary or appropriate, irrespective of the way in which they became aware of the situation.

During the months that these discussions were taking place, the timeframe for resolving the violation established by the July 17 and August 6 Notices of Code Violation expired, and on May 23, 2013, the Community Development Director mailed a Notice of Preliminary Determination (Attachment E). This notice is the first step required to pursue administrative fines in accordance with the procedures established by Chapter 31.5 of the Zoning Regulations (Attachment F)², and identified that failure to resolve or abate the violation would result in a fine of \$100 for the first day and \$25 for each additional calendar day that the violation continues to exist. The decision to pursue these fines was made after the Department's efforts to obtain voluntary compliance failed.

Following the issuance of the Notice of Preliminary Determination, on June 11, 2013, Ms. Manson came in to the Planning and Building Department to discuss what is needed to apply for the permits required to legalize the business. She was also informed of the application fee, and the procedures required to request a fee waiver. However, no applications were ever filed, and on October 4, 2013, the Planning and Building Department issued a Notice of Determination of Fines. That notice identified \$2,600 as the amount of the fine that had accrued since the issuance of the Preliminary Determination of Violation.

In response to the above actions, customers and supporters of the store have written in support of the business. Copies of the correspondence received are included as Attachment G.

3. Appeal Procedures

Section 6596.8 of the Zoning Regulations allows the recipient of an administrative fine to appeal the fine to the Planning Commission within 30 days of their receipt of the Notice of Preliminary Determination. In accordance with these procedures, Ms. Manson filed an appeal on October 31, 2013 (Attachment B). In summary, the appeal contends that the resident of the property is an artist and is not running a business.

According to Section 6596.8, in reviewing the fine, the Planning Commission shall consider the factors set forth in Section 6596.6, which sets forth the method for calculating fines described in the Notice of Preliminary Determination (i.e., \$100 for the first day and \$25 each day thereafter during

² Chapter 31.5 was deleted and replaced by Ordinance 04648, adopted by the Board of Supervisors on January 8, 2013 and certified by the Coastal Commission on October 10, 2013.

which the violation continues to exist), and “shall uphold the fine imposed by the Director, eliminate the fine, or modify the fine.” The decision made by the Planning Commission is not appealable.

4. Basis for Fines

The staff recommendation to uphold the fine of \$2,600 is based on the following factors:

Confirmed Violation: Although the appeal asserts that the property is not being used to operate a business, there is adequate evidence that retail sales were being conducted during the time that code compliance efforts were being pursued. This evidence includes the observations of staff from the Planning and Building Department, the Sheriff’s Office, and the Fire Department; letters of support from customers of the store; correspondence and discussions with Ms. Manson and Mr. Snow in which the operation of the business was acknowledged; the ongoing presence of objects intended for retail sale on the site; and internet sites advertising the business (e.g., <http://www.yelp.com/biz/half-to-have-it-and-nest-gallery-half-moon-bay-2>). Thus, there is no reason to eliminate or adjust the fine based on the assertion that the site is not being used as a business.

Due Process: The Planning and Building Department has exhausted its ability to obtain voluntary compliance, and has followed the procedures specified by regulation to determine the amount of the fine. There is no reason to reduce or eliminate the fine based on an assertion that the recipient of the fine was not provided adequate notice that such a fine would be levied.

Public Health, Safety and Welfare: The establishment of a business without the proper permits raises important issues regarding the health and safety of the people that visit the business, as well as the impact that the business may have on the surrounding community. When efforts to obtain voluntary compliance fail, the use of fines to enforce permitting and zoning requirements is a valid and essential method by which the County can address these issues.

Code Compliance Administration: In accordance with County’s desire to maximize Department’s ability to recover its costs of doing business, the issuance of administrative fines provides the Planning and Building Department with the ability to recover a portion of the cost of its code compliance activities. Although the fine of \$2,600 will not completely cover these costs, it will minimize the degree to which enforcement efforts are being supported by the County’s General Fund.

Integrity of Permit Requirements: The ability to use administrative fines when necessary to enforce permitting and zoning requirements helps to

protect the integrity of the County's permitting system. Without such penalties, there is less incentive for compliance, and an unfair playing field for property owners and tenants who abide by permit requirements. The fine of \$2,600 is less than the permit application fees recently paid by other businesses looking to become established in the Princeton area, including a new café and a new distillery.

5. Case Resolution

Closure of the open violation case requires the property owner or tenant to provide written and photographic evidence that the site is no longer open for business, and that all materials and merchandise associated with the business have been removed from the site. If such evidence is provided prior to March 14, 2014, along with the payment of the outstanding fine, no additional fines will be pursued.

B. ALTERNATIVES

As described above, the alternatives available to the Planning Commission are to uphold the fine imposed by the Community Development Director, eliminate the fine, or reduce the fine. The Planning Commission could also continue the hearing and/or a decision on this matter to a later date.

C. ENVIRONMENTAL REVIEW

The enforcement of existing planning and zoning regulations does not constitute a project that requires environmental review under the California Environmental Quality Act.

D. REVIEWING AGENCIES

County Counsel

ATTACHMENTS

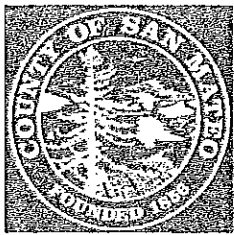
- A. Notice of Determination of Fines
- B. Appeal
- C. First Notice of Code Violation
- D. Second Notice of Code Violation
- E. Notice of Preliminary Determination of Violation
- F. Zoning Regulations Chapter 31.5
- G. Correspondence

SAM:AMS:fc – AMSY0093_WFU.DOCX



County of San Mateo - Planning and Building Department

ATTACHMENT A



County of San Mateo

Planning & Building Department

455 County Center, 2nd Floor
Redwood City, California 94063
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122
plngbldg@smcgov.org
www.co.sanmateo.ca.us/planning

October 4, 2013

CERTIFIED MAIL

Mr. John M. Willis
John Willis Trust
131 California Avenue
Half Moon Bay, CA 94019

Dear Mr. Willis:

SUBJECT: NOTICE OF DETERMINATION OF FINES

On May 23, 2013, you were provided a Preliminary Determination of Violation, which informed you of the illegal use of your property. The Preliminary Determination of Violation further informed you that failure to resolve or abate the violation would result in administrative fines at the rate of \$100.00 for the first day and \$25.00 for each additional calendar day that the violation continues to exist on your property, beginning on the date you received the Notice.

Since that time, you have failed to take action to resolve or abate the violation of a retail business and the removal of all the items on the property. Therefore, the amount of the administrative fine that has accrued as of October 2, 2013 is \$2,600.00. Payment of this fine is due within thirty (30) calendar days of your receipt of this notice. In accordance with Section 6596.7 of the Zoning Regulations, this notice serves to inform you that you have the right to appeal this determination to the Planning Commission within thirty (30) days of the date of this notice.

Absent such an appeal, failure to pay these fines to the Planning and Building Department will result in referral of this matter to the San Mateo Revenue Services Department for collections. Administrative fines will continue to accrue and be collected until the violation has been abated to the satisfaction of the Planning and Building Department.

This notice is to inform you that if you do not comply after the 30 days, I will have to move forward with obtaining an inspection warrant, followed by the abatement warrant.

Mr. John M. Willis

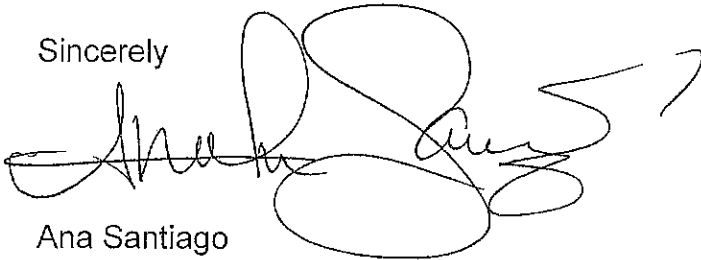
- 2 -

October 4, 2013

You will be liable for the expense of the clean-up. Our objective is to protect life and property, and to bring your property into compliance with its original permitted USE.

If you have any questions or concerns about this matter, you may contact me at 650/363-4825. I may be reached at this number, Monday through Friday, 7:00 a.m. to 3:00 p.m.

Sincerely

A handwritten signature in black ink, appearing to read 'Ana Santiago', with a large, stylized flourish extending to the right.

Ana Santiago
Senior Code Compliance Officer

AMS:jlh – AMSX0693_WJE.DOCX



County of San Mateo - Planning and Building Department

ATTACHMENT B

Planning and Building Department

County Government Center • 455 County Center, 2nd Floor
Redwood City • CA • 94063 • Mail Drop PLN 122
Phone: 650 • 363 • 4161 Fax: 650 • 363 • 4849

Application for Appeal

- To the Planning Commission
- To the Board of Supervisors

Name: Melissa Manson for
John Michael Willis

Phone, W: 650 208 5729 H: _____

Address: 131 California Ave.
Half Moon Bay, CA

Zip: 94019

Permit Numbers involved:
V102012-00074

I have read and understood the attached information regarding appeal process and alternatives.

yes no

- I hereby appeal the decision of the:
- Staff or Community Development Director
 - Zoning Hearing Officer
 - Design Review Committee
 - Planning Commission

Appellant's Signature: _____
 Date: 10/31/13

made on Oct. 4 20 13, to approve/deny the above-listed permit applications. - See V10 Letter

Planning staff will prepare a report based on your appeal. In order to facilitate this, your precise objections are needed. For example: Do you wish the decision reversed? If so, why? Do you object to certain conditions of approval? If so, then which conditions and why?

Per the planning department, I have complied with the zone and do not operate any business in a residence. I am an artist and certified appraiser, any items in the lot, attached to the residence are my personal collection. My objective is to continue to bring tourists, to the area in harbor. However I am not allowed to serve my community. Under the current understanding this is a legal non conforming residence in a W/DR zone. I believe I am in

compliance. I have attempted to understand the zoning and will continue to work toward submitting for use in the future should I decide to start a business in the future. At this time I provide only services/items i.e. mermaids, otters, other sea related creatures, that I make in the yard.



County of San Mateo - Planning and Building Department

ATTACHMENT C



County of San Mateo

Planning & Building Department

455 County Center, 2nd Floor
Redwood City, California 94063
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122
plngbldg@smcgov.org
www.co.sanmateo.ca.us/planning

August 6, 2012

CERTIFIED MAIL

John M. Willis Trust
131 California Avenue
Half Moon Bay, CA 94019

Dear John M. Willis Trust:

SUBJECT: NOTICE OF CODE VIOLATION
File No. VIO 2012-00074; APN 047-088-250

As the record owner of the property located at 131 California Avenue, Half Moon Bay, I am requesting your **immediate attention** to violations of the County of San Mateo Zoning Regulations. In response to a complaint, this Department inspected your property and determined that you are in violation of Sections 6287 and 6102.46. Specifically, operating a business (Have to Have It/The Nest) from your home that involves an outdoor store with antiques and selling of items is a Home Occupation.

Section 6102.46 restricts customary, incidental home occupations conducted within a dwelling, provided that no retail business of any sort is involved; no stock in trade is kept, or commodity sold, except for the sale of commodities made on the premises; **no person not a resident of the premises is employed; and an area not larger than one-fourth (1/4) of the floor area of the ground floor of the dwelling is devoted to such home occupation;** provided, however, that such home occupation shall not require internal or external alterations, or involve construction features, or use of equipment not customary in dwellings.

Pursuant to Zoning Regulations Section 6594 and Section 1.12.010 of the County's Ordinance Code, these violations are unlawful and constitute a public nuisance. The required corrective action is to immediately remove the tents and the commodity being sold from your property. Additionally, the garbage outside along the fence line must be removed. You must take the necessary corrective action by August 17, 2012.

The required corrective action is to immediately cease the use of the property as a store. Conducting any type of business on the premises **is prohibited**. Please take the corrective action by August 17, 2012.

Your failure to correct the violations by August 17, 2012, will result in a citation being issued to you for using and maintaining your property contrary to the provisions of the County's Zoning Regulations. The amount of bail for the first citation is approximately \$238.00 and

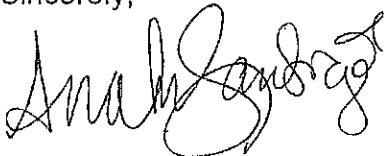
unless the nuisance is abated and all code violations corrected: (1) additional citations **will be issued**, requiring mandatory court appearances, (2) a Notice of Continuing Nuisance will be recorded against the property on which the nuisance is found, and (3) summary abatement of the nuisance may be undertaken by the County, at your expense.

Please be advised that violations of the County Ordinances may also be prosecuted through civil and/or criminal procedures; however, we would prefer to work cooperatively with you on this matter and avoid any legal involvement.

Notice is hereby given that your failure to correct this violation by **August 17, 2012**, will result in your being assessed administrative costs associated with the processing of this violation at an hourly rate as established and adjusted from time to time by the Board of Supervisors. The hourly rate presently in effect is \$50.00 per hour of staff time. At the conclusion of this case, you will receive a summary of administrative costs charged to you. You will have the right to object to these charges by filing a Request for Hearing with the Planning and Building Department within ten (10) calendar days of service of the summary of charges. However, if legal action is implemented against you to obtain compliance, no appeal of the enforcement processing fees will be available.

If you have any further questions or concerns about this matter, you may contact me at 650/363-4825. I may be reached at this number, Monday through Friday, 7:00 a.m. through 4:00 p.m. I strongly suggest that if you wish to see me that you call to make an appointment, as I am frequently out of the office on site inspections. Your cooperation in correcting this violation is appreciated.

Sincerely,



Ana Santiago
Senior Code Compliance Officer

AS:fc – AMSW0529_WFE.DOCX

cc: Charles Clark, Building Inspection Section



County of San Mateo - Planning and Building Department

ATTACHMENT D



County of San Mateo

Planning & Building Department

455 County Center, 2nd Floor
Redwood City, California 94063
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122
plngbldg@smcgov.org
www.co.sanmateo.ca.us/planning

07/17/2012

CERTIFIED MAIL

John M Willis trust
131 California Ave
Half Moon Bay, CA 94019

To the Trust of John M. Willis:

SUBJECT: **NOTICE OF CODE VIOLATION**
File No. VIO 2012-00074; APN No. :047-088-250

As the record owner of the property located at 131 California Ave., Half Moon Bay, I am requesting your **immediate attention** to violations of the County of San Mateo Zoning Regulations. In response to a complaint, this Department inspected your property and determined that you are in violation of Sections 6287 and 6102.46. Specifically, operating a business (Have to Have it/ The Nest) from your home has been determined that you are in violation of Section 6287 specifically; you are operating an outdoor store with antiques, and other items being sold is a Home occupation. A retail marine supply store primarily engaged in sales to the general public of merchandise customarily used in connection with marine vessels.

Section 6102.46 Customary, incidental home occupations conducted within a dwelling, provided that no retail business of any sort is involved; no stock in trade is kept, or commodity sold, except for the sale of commodities made on the premises; **no person not a resident of the premises is employed**; and an **area not larger than one-fourth (1/4) of the floor area of the ground floor of the dwelling is devoted to such home occupation**; provided, however, that such home occupation shall not require internal or external alterations, or involve construction features, or use of equipment not customary in dwellings

Pursuant to Zoning Regulation 6594, and Section 1.12.010 of the County's Ordinance Code, these violations are unlawful and constitute a public nuisance. The required corrective action is to immediately remove the tents and the commodity being sold from your property. You have garbage all outside of the property and along the fence line. You must take the necessary corrective action by **August 17, 2012**.

On 06/14/2012, I was at your establishment and did an inspection of the exterior of the premises. During my research I have found that the store being run on the property is not an allowed use.

Your property is located within (W-DR-CD) District.

The required corrective action is to immediately cease the use of the property as a store. Conducting any type of business on the premises is **prohibited**. Please take the corrective action by August 17, 2012

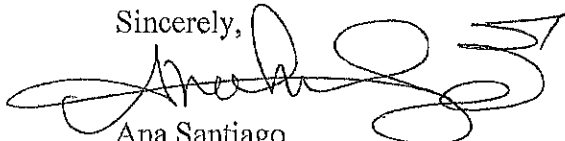
Your failure to correct the violations by August 17, 2012, will result in a citation being issued to you for using and maintaining your property contrary to the provisions of the County's Zoning Regulations. The amount of bail for the first citation is approximately \$238.00 and unless the nuisance is abated and all code violations corrected; (1) additional citations **will be issued**, requiring mandatory court appearances, (2) a Notice of Continuing Nuisance will be recorded against the property on which the nuisance is found, and (3) summary abatement of the nuisance may be undertaken by the County, at your expense.

Please be advised that violations of the County Ordinances may also be prosecuted through civil and/or criminal procedures; however, we would prefer to work cooperatively with you on this matter and avoid any legal involvement.

Notice is hereby given that your failure to correct this violation by **August 17, 2012**, will result in you being assessed administrative costs associated with the processing of this violation at an hourly rate as established and adjusted from time to time by the Board of Supervisors. The hourly rate presently in effect is \$50.00 per hour of staff time. At the conclusion of this case you will receive a summary of administrative costs charged to you. You will have the right to object to these charges by filing a Request for Hearing with the Planning and Building Department within ten calendar days of service of the summary of charges. However, if legal action is implemented against you to obtain compliance, no appeal of the enforcement processing fees will be available.

If you have any further questions or concerns about this matter, you may contact me at (650) 363-4825. I may be reached at this number, Monday Through Friday, 7:00a.m. through 4:00p.m. I strongly suggest that if you wish to see me that you call to make an appointment, as I am frequently out of the office on site inspections. Your cooperation in correcting this violation is appreciated.

Sincerely,



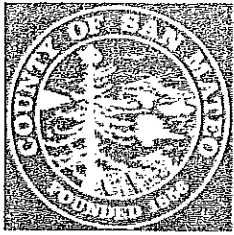
Ana Santiago
Senior Code Compliance Officer

CC: Charles Clark, Building Department Supervisor



County of San Mateo - Planning and Building Department

ATTACHMENT E



County of San Mateo

Planning & Building Department

455 County Center, 2nd Floor
Redwood City, California 94063
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122
plngbldg@smcgov.org
www.co.sanmateo.ca.us/planning

May 23, 2013

**HAND DELIVERED, AND
CERTIFIED AND REGULAR MAIL**

Mr. John M. Willis
John Willis Trust
131 California Avenue
Half Moon Bay, CA 94019

Dear Mr. Willis:

**SUBJECT: NOTICE OF PRELIMINARY DETERMINATION OF VIOLATION
INVOLVING THE ILLEGAL USE OF YOUR PROPERTY LOCATED
AT 131 CALIFORNIA AVENUE, PRINCETON; APN 047-022-250
FILE NO. VIO 2012-00074**

This notice serves to inform you that the Community Development Director has determined that the ongoing illegal use of the above-referenced property for the operation of "The Nest," a non-marine related retail establishment, constitutes a serious violation of the San Mateo County Zoning Regulations. The owner of the property and/or the person responsible for the violation is subject to daily fines for each day that the violation continues to exist, pursuant to Chapter 31.5 of the San Mateo County Zoning Regulations.

As described by the previous violation notice provided to you on August 6, 2012, non-marine related retail businesses are not allowed in the applicable Waterfront/Design Review/Coastal Development (W/DR/CD) Zoning District without a Use Permit and Coastal Development Permit. That notice also informed you that the use of a residential dwelling for a retail use is not a permissible home occupation, and that failure to cease the retail use or apply for the necessary permits by October 26, 2012, would result in a citation being issued to you under the provisions of Section 1.12.010 of the County Code. None of the required permit applications have been submitted to date, and the issuance of this notice is therefore accompanied by a nuisance citation, as provided by Section 6596.4(g) of the Zoning Regulations.

The procedures established by Section 6596.4 establish a thirty (30) day period from the date you receive this notice for you to submit, in writing, either (1) a schedule specifying a reasonable time period within which the violation will be abated, or (2) any information relating to a determination of the existence of a violation or the amount of the fine imposed. Failure to provide this information within the thirty (30) day period will result in a fine of one

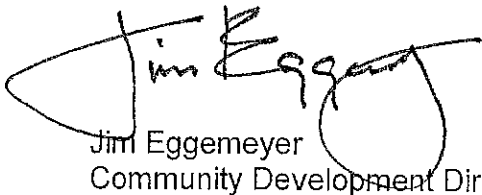
May 23, 2013

hundred dollars (\$100.00) for the first day following the date of this notice, and twenty-five dollars (\$25.00) per each day for each calendar day thereafter, that the violation exists on the property.

You will also be assessed the administrative cost associated with the processing of this violation at an hourly rate as established and adjusted from time to time by the Board of Supervisors. The hourly rate presently in effect is \$50.00 per hour of staff time. At the conclusion of this case, you will receive a summary of administrative costs charged to you. You will have the right to object to these charges by filing a Request for Hearing with the Planning and Building Department within ten (10) calendar days of service of the summary of charges. However, if legal action is implemented against you to obtain compliance, no appeal of the enforcement processing fees will be available.

If you have questions regarding this notice, please contact Ana Santiago, the Department's Senior Code Compliance Officer, at 650/363-4825.

Sincerely,

A handwritten signature in black ink that reads "Jim Eggemeyer". The signature is stylized with a large, sweeping initial "J" and a circular flourish at the end.

Jim Eggemeyer
Community Development Director

JE:SAM:fc – SAMX0350_WFN.DOCX



County of San Mateo - Planning and Building Department

ATTACHMENT F

CHAPTER 31.5. ADMINISTRATIVE FINES

SECTION 6596.0. PURPOSE. It is the purpose of this Chapter to provide for the uniform administration of per diem fines for serious violations of the Planning, Building, and Sanitation and Health codes of San Mateo County. The intent of this Chapter is to obtain compliance with the codes through application of the minimum enforcement action necessary to correct serious violations. The application of this Chapter shall be preceded by attempts to obtain compliance through other available methods.

SECTION 6596.1. DEFINITIONS. For the purposes of this Chapter, certain terms used herein are defined as follows:

- (a) **Director.** "Director" shall include the Planning Director or Environmental Health Director or their designees.
- (b) **Persons.** "Person(s)" includes, but is not limited to, licensed or unlicensed contractors and subcontractors, owners of property, agents of the property owners, occupants or tenants of the property.
- (c) **Serious Violation.** A "serious" violation is defined as any of the following:
 - (1) A serious threat to the public health or safety of the occupants at the subject property or occupants at property in the immediate vicinity.
 - (2) An illegal use of the property which, for purposes of this ordinance, is a use not allowed in the zoning district where the property is located.
 - (3) A failure by a person(s) to respond to efforts to resolve or abate a violation or failure to make a conscientious effort to do so by not responding to written notice within 60 days and failing to continue a dialogue aimed at abatement.
 - (4) A history of violations on the subject property and/or several different properties.
 - (5) Multiple or repeat violations on the subject property within the past three (3) years.
 - (6) Commencement of work by licensed or unlicensed contractor on the subject property without a current and valid permit or other authorization issued by the County of San Mateo.

SECTION 6596.2. ADMINISTRATIVE FINES IN ADDITION TO OTHER REMEDIES; AUTHORITY. In addition to any other remedy allowed by law, any violation of the

provisions of Division VI (Planning), Division VII (Building Regulations) or Division IV (Sanitation and Health) of this Code shall be subject to the payment of an administrative fine as set forth in this article. The authority for the imposition of administrative fines is found in Government Code Section 53069.4.

SECTION 6596.3. AMOUNT OF FINES. Any person who violates any provision of Division VI (Planning), Division VII (Building Regulations) or Division IV (Sanitation and Health) of this Code, such that a serious violation, as defined in Section 6596.1(c), exists on the subject property, or who is the owner of property upon which such a serious violation exists, shall be subject to payment of an administrative fine in the maximum amounts as set forth below.

SECTION 6596.4. PROCEDURES.

- (a) Upon determining that a serious violation of Division VI (Planning), Division VII (Building Regulations) or Division IV (Sanitation and Health) exists with respect to any property, the Director shall mail to the owner and occupant of such property and any other persons believed to have caused the violation in whole or in part, by certified mail or personal service by a peace officer, a Notice of Preliminary Determination of Violation, specifying with particularity the violations on the property, the basis for determining that a serious violation exists pursuant to Section 6596.1(c) of this Chapter, and the proposed administrative fine for such violation determined in accordance with Section 6596.5 or 6596.6, as appropriate. The notice shall provide a thirty (30) day period, from the date of receipt of the notice, for the owner, occupant or other person to submit, in writing, either (1) a schedule specifying a reasonable time period within which the violation will be abated, or (2) any information relating to a determination of the existence of a violation or the amount of the fine to be imposed.
- (b) If the owner, occupant or other person fails to respond to the notice within the thirty (30) day period specified in subsection (a) above, the Director shall impose an administrative fine as specified in Section 6596.5 or Section 6596.6, as appropriate.
- (c) If the owner, occupant or other person provides a schedule for abatement within the thirty (30) day period specified in subsection (a), the Director shall determine whether the schedule is reasonable. If the Director determines that the submitted schedule is reasonable, he or she shall so notify the owner, occupant or other person. If the Director determines that the submitted schedule is unreasonably long, the Director shall specify a new schedule and notify the owner, occupant or other person of the requirement to comply with the new schedule. The imposition of administrative fines shall be stayed during such period as the owner, occupant or other person pursues correction of the violation in good faith and according to the required schedule.

- (d) If the owner, occupant or other person provides information relating to a determination of the existence of the violation or the amount of the fine to be imposed, the Director shall consider such information, and shall make a final determination as to whether a violation exists and, if so, the amount of the fine to be imposed. The Director shall notify the owner, occupant or other person of his or her findings, and provide the applicant thirty (30) days, from receipt of the notice, within which to submit a schedule for abatement of the violation in accordance with the procedure set forth in subsection (c) above. If the owner, occupant or other person fails to respond to the notice by providing the required schedule within thirty (30) days of the notice, the Director shall impose an administrative fine as specified in Section 6596.5 or Section 6596.6, as appropriate.
- (e) If at any time the Director determines that the owner, occupant or other person is not pursuing correction of the violation in good faith, the Director may impose an administrative fine as specified in Section 6596.5 or Section 6596.6, as appropriate.
- (f) In implementing the procedures set forth in the section, the Director shall have the discretion to extend any time period for correction of the violation if, in his or her opinion, good faith efforts are being made to correct the violation.
- (g) The notice of violation prescribed in this section may be combined with any other notice of violation authorized to be issued by this Code.

SECTION 6596.5. AMOUNT OF FINE - INFRACTION. If the violation is designated an infraction by this Code, the administrative fine shall be the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Government Code Section 25132, which fine may be imposed if the violation is not abated by the effective date of the notice of violation.

SECTION 6596.6. AMOUNT OF FINE - OTHER. If the violation is not designated an infraction by this Code, the maximum administrative fine shall be in the amounts set forth below:

- (a) If the violation arises from an unlawful commercial, industrial, rental (residential or non-residential), owner-occupied residential or similar use or structure on the property, the maximum fine shall be calculated by one of the following methods as determined by the Director:
 - (1) The fair market rental value of the land or structure in violation for the period of time elapsed from the effective date of the notice of violation; or
 - (2) One hundred dollars (\$100.00) for the first day, and twenty-five dollars (\$25.00) per day for each calendar day thereafter, that the violation exists

on the property after the effective date of the notice of violation through to its abatement by whatever means; or

- (3) In the event that the use or structure in violation may be permitted with an appropriate permit, and the person obtains the required permit, up to a maximum of five times the amount of the standard fee for such permit.
- (b) For any other violation, including but not limited to an unlawful non-commercial junkyard, an unlawful non-commercial truck terminal, an unlawful non-operative vehicle storage yard, unlawful accessory structure or an unlawful excess number of animals, the maximum fine shall be calculated by one of the following methods as determined by the Director:
- (1) One hundred dollars (\$100.00) for the first day, and twenty-five dollars (\$25.00) per day for each calendar day thereafter, that the violation exists on the property after the effective date of the notice of violation through to its abatement; or
 - (2) In the event that the use or structure in violation may be permitted with an appropriate permit, and the owner obtains the required permit, up to a maximum of five times the amount of the standard fee for such permit.

SECTION 6596.7. DETERMINATION OF FINES; NOTICE OF DETERMINATION OF FINES.

The determination of fines shall be made in the first instance by the Director. Such determination shall take into account the facts and circumstances of the violation including but not limited to the length of time the violation has existed; the culpability of the person(s) in violation or the willfulness of the violation; attempts, if any, to comply with the applicable ordinances; the time necessary to abate the violation; and any other information relevant to a determination of fines to be imposed. In making a determination of the fines to be imposed, the Director shall consider any information submitted by the person(s). In the event that the Director determines that the violation was not caused by or with the knowledge of the person(s) who caused the violation, the fine will be eliminated. In the event the Director determines that the correction of the violation is not feasible, and the violation does not present a threat to public health or safety, the Director shall eliminate the fine. The determination of fines shall be made, and a Notice of Determination of Fines shall be sent by certified mail or personal service by a peace officer to the person(s) upon which the fine has been imposed.

SECTION 6596.8. APPEAL. Any person upon whom an administrative fine is imposed by the Director may appeal such fine to the Planning Commission, in the case of violations of Division VI, or the Board of Building Permit Appeals in the case of violations of Division IV or VII. The appeal must be filed within thirty (30) working days of the date of mailing of the Notice of Determination of Fines. In reviewing the fine, the Planning Commission or the Board of Building Permit Appeals, as appropriate, shall consider the factors set forth in Section 6596.6, above, and shall uphold the fine imposed by the

Director, eliminate the fine, or modify the fine. Additionally, any person who disagrees with a time schedule established by the Director pursuant to Section 6596.4(c) may appeal such determination to the Planning Commission or Board of Building Permit Appeals within ten (10) days of the receipt of notice of the schedule from the Director. The action of the Planning Commission or the Board of Building Permit Appeals shall be final, subject only to judicial review.

(Chapter 31.5 - Added by Ordinance No. 3810 - Effective in Non-Coastal Areas
December 16, 1997. Effective in Coastal Areas July 18, 1998)

JKE:fc - JKE1210.6FR
(7/15/99)



County of San Mateo - Planning and Building Department

ATTACHMENT G

Date: September 17, 2012

To: Princeton Task Force Members

From: Douglas Snow

Re: Cease and desist against NEST Gallery/ HALF TO HAVE IT, LLC.

RECEIVED

2012 SEP 18 P 2:06

SAN MATEO COUNTY
PLANNING AND BUILDING
711 DEPARTMENT

Dear Task Force Members;

*Jim,
I know you are very busy,
but this needs to be addressed & resolved*

As Steve Monowitz has not responded to my request for a complaint removal, I now address those not implicated: the Fire and Sheriff members of Princeton Task Force, Supervisor Horsely and Jim Eggemeyer.

It is clear that a cease and desist order filed against NEST/HTHI is invalid! Author's names were forged, in an illegal staff created anonymous citizen complaint.

It appears this politically formed, well-intentioned task force is enforcing hidden agendas recklessly.

I am requesting you remove the complaint against NEST/HTHI by recognizing flaws exposed in the complaint process. Present planning policy was not followed in issuing the original complaint and land use violations will be addressed during the present rezoning of Princeton.

I understand NEST/HTHI is a visible business and a likely political target. Is it wise to antagonize a majority of Princeton business and property owners at a time when the public needs your support? The strategy of singling out a beloved-women-owned business is already creating major blow-back beginning with supportive emails to County offices.

The owner of NEST/HTHI, Melissa Manson immediately addressed the written fire violations given to her on 5/9/12. She continues to address new concerns given to her by Fire Marshall Riddell and Sheriff Watson.

Respectfully Submitted,



Douglas Snow

Architect and Planner, Former HMB Planning Commissioner, Former Chair of Coastside and HMB Design Review Committees, Contributing member of Laguna Beach Master Plan Task Force.

Date: September 21, 2012

To: Anna Santiago , Senior Code Compliance Officer

From: Douglas Snow

Re: Cease and desist against NEST Gallery/ HALF TO HAVE IT, LLC.

Officer Santiago;

I request that the cease and desist order filed against NEST/HTHI be removed. Names of complaintants were forged and it is illegal for county employees to create and implement an anonymous citizen complaint. Furthermore it is county policy that zoning violations be citizen driven only.

Respectfully Submitted,

Douglas Snow

Architect and Planner, Former HMB Planning Commissioner, Former Chair of Coastside and HMB Design Review Committees, Contributing member of Laguna Beach Master Plan Task Force.

Melissa

NANSON

Steve Monowitz - Nest Gallery/Have to Have It

From: "Wendell DeLano" <wendelldelano@msn.com>
To: SMonowitz@smcgov.org; JEggemeyer@smcgov.org; Dgirsket@smcgov.org
Date: 10/29/2013 10:56 AM
Subject: Nest Gallery/Have to Have It

Greetings Gentleman,

I live up in the city of Alameda. Twice a year we make a special trip to the Nest Gallery to look around for gifts and items to use in our our home studios.

It's a wonderful day. We drive down to beautiful Half Moon Bay and then up to Princeton. We always have lunch there in Princeton and go shopping at the Nest Gallery along with visiting the other stores in the area. We also go out onto the pier to see what is going on there and take in the fresh sea air. It's just wonderful.

We were so disappointed to get down there a few weeks ago and find that they have been served a cease and desist notice due to a zoning issue. It really saddened us as we love this spot and we love this tradition we have of going to Princeton to visit the Gallery. I am not sure what the problem is but I hope that you can find some way to help the owner work around whatever it is. There really is no other place like this one. It is a gem. I know there are many people up here in the East Bay that make their way down to this location for a fun day and help stimulate the economy. I am sure there are a lot of folks all over who feel the same way. It is a draw to the Princeton area. I don't think we would have really wondered around in Princeton if, Have to Have it was not there. I am so glad it is, as Princeton is a wonderful place too. We have told so many people about this art gallery and what a fun day it makes to go there and eat out, etc.

We are artists so can appreciate the need for these types of really fun and eclectic places. I hope you all can too. Please find a way to work things out that is manageable for both sides as it would be a real shame to lose this. We all need places like this one in our lives. It inspires our creative juices and its not often you find a place that does that.

Thank you so much for your time and I hope this can be resolved.

Jan DeLano
Alameda, CA

From: Michelle Windell <michelley@coastside.net>
To: <Dhorsley@smcgov.org>, <jeggemeyer@co.sanmateo.ca.us>, <SMonowitz@co.san...>
Date: 1/3/2014 5:03 PM
Subject: Half to Have It Zoning issue

Hello,

I am writing on behalf of Melissa Manson and her business Half to Have It in Princeton-by-the-Sea. Half to Have It is probably my favorite place to shop on the coast side, and is the kind of place that lends the area its charm. That she has been served a cease and desist order is a shame, and a great loss to the community. Please do what you can to ensure that Ms. Manson is allowed to operate as a compatible use business. I'm sure Big Ed's Crane Service and Exclusive Freshness Seafood will not be bothered by her presence in the area.

Sincerely,
Michelle Windell

Steve Monowitz - Have to Have It as Compatible Use Business

From: Kathryn Lenhart <kathrynlhart@sbcglobal.net>
To: "Dhorsley@smcgov.org" <Dhorsley@smcgov.org>, "jeggemeyer@co.sanmateo.ca....
Date: 11/3/2013 10:48 PM
Subject: Have to Have It as Compatible Use Business
CC: "Nestgalleryhmb@gmail.com" <Nestgalleryhmb@gmail.com>

San Mateo County Government Leadership,

"Have to Have It" has been a must stop for me for decades and I would never go to Princeton Harbor if it wasn't for this amazing shop.

Many of my friends and colleagues have discovered Princeton Harbor because of our visits to "Have to Have It".

I have followed this shop from Half Moon Bay to its current location in your community. It is **the most** interesting and fun place in the whole Harbor!

After I go to "Half To Have It", I enjoy dining at the many seafood restaurants which I discovered thanks to Melissa's encouragement and networking. The fishing and boating at the Harbor make a fine compliment to my day. Without this unique shopping opportunity I would never make the journey to Princeton Harbor. With this said, I firmly believe you should grant "Have to Have It" a compatible use business label based on the unique role it plays in supporting visitation in Princeton Harbor.

Thank you "Half to Have It" for having the most unique, must-see experience in all of Princeton Harbor!!

Sincerely,
Kathryn Lenhart
Media Director
San Francisco, CA

From: Marc Strohlein <mstrohlein@agilebusinesslogic.com>
To: <jeggemeyer@co.sanmateo.ca.us>, <smonowitz@co.sanmateo.ca.us>
Date: 1/8/2014 11:10 AM
Subject: Fwd: Nest Gallery

I live in El Granada and frequently walk to Princeton Harbor to enjoy the shops and restaurants. I was dismayed to find out, last weekend, that the Nest Gallery has been shut down due to a zoning issue. I have a Masters degree in Urban Planning so I fully understand zoning, but anyone that spends time in the harbor knows that it is a very diverse collection of businesses and living quarters. The Nest Gallery fits the character of the harbor, supplies enjoyment to many residents and tourists, and provides a livelihood for the owners. I would counsel that, if you want to enhance and protect the well being of coastal residents such as myself, focus on positives, not rigid enforcement of codes and laws. Most of us that live on the coast like it because it is casual, friendly, and unique--please help us keep it that way. Marc --
Marc Strohlein Principal, Agile Business Logic
www.agilebusinesslogic.com 650-766-1067 Skype: mstrohlein Twitter: mstrohlein

12/20/2012

Douglas Snow
426 Saint John Ave.
Half Moon Bay, CA 94019
Mobile: 959.890.7350

Regarding - the notice of Code Violation File # 2012-00074; APN 047-088-250

Project Address:
131 California Avenue
Princeton-by-the-Sea, CA 94019

To: Steve Monowietz

I am asking for your help in the processing of this application.

One: I am requesting that this project be put on hold until after the present rezoning has been completed, as California Avenue properties, a route to Mavericks, bay and ocean front beaches, should be changed to visitor serving.

Two: If **One** is unacceptable, then submit Half To Have It/Nest Gallery be classified as a compatible use. This business brings new customers to Princeton-by-the-Sea and Pillar Point Harbor. This supports the sale of boat side fish and crab.

Three: If fees are required, I ask that they be prorated at \$100.00 per month or even dismissed.

Four: After the first of the year, I plan to deal with the illegal actions of the planning staff members of the Clean Up Princeton Task Force.

Respectfully,

Douglas Snow

RECEIVED

JAN 09 2013

San Mateo County
Planning and Building Department

Ana Santiago
Senior Code Compliance Officer
County of San Mateo
Planning & Building Department
455 County Center, 2nd Floor, Redwood City, California 94063

October 25, 2012

We also want to work cooperatively with San Mateo County Planning.

This is to inform you that both Ms Melissa Manson and Mr Douglas Snow have my permission to represent me and act on my behalf regarding negotiations with County Planning and to identify the required use permit(s).

Sincerely,



John Willis
131 California Ave
Half Moon Bay, CA 94019

re: File No. VIO 2012-00074; APN 047-088-250

Ana Santiago - Fw: IMPORTANT: HAVE TO HAVE IT/THE NEST Hearing

From: Randie Marlow <images@randiemarlow.com>
To: "hhardy@smcgov.org" <hhardy@smcgov.org>
Date: 12/10/2013 2:14 PM
Subject: Fw: IMPORTANT: HAVE TO HAVE IT/THE NEST Hearing
Attachments: DouglasSnow_To Horsely.docx

Thank you Heather.

----- Forwarded Message -----

From: Randie Marlow <images@randiemarlow.com>
To: Don Horsely <Dhorsely@smcgov.org>
Sent: Monday, December 9, 2013 4:49 PM
Subject: IMPORTANT: HAVE TO HAVE IT/THE NEST Hearing

From: Douglas Snow,
 December 9, 2013
 Advisor to Melissa Manson
 To: Supervisor Don Horsley
 Regarding: Supervisor Horsley's e-mail response to Eli Hall's and Audrey Joyce's e-mails

Dear Sir,

Twice As Nice, like **Have To Have It** is a small business retail store without zoning approval.

Months ago Lisa Aozasa, a head planner and I reviewed the record. The building that houses **Twice As Nice** was approved for marine storage, therefore this community serving business does **not** have zoning approval, which is typical for this area.

Now to the diffuse underlying issue you were speaking to in your e-mail. The County Record supports my position that a property's use does not change when a legal, non-conforming residence is present.

Next there is a Supervisor Policy that one or more of your Princeton Committee Members have violated, perhaps even illegally.

Policy – County Employees may **not** make zoning violation complaints: this responsibility is given to the general public and is exercised through the anonymous citizens complaint process.

In a forthcoming white paper, I will attempt to explain the economic and social value of this confusing policy.

Finally, Anna Santiago, a County Employee by passed this policy and must have had a personal agenda when she fabricated and issued an anonymous complaint against **Have To Have It**.

There were no complantees:

I appeal to you to be fair to Melissa Manson and remove this illegal covert complaint.

Respectfully Yours,

Douglas Snow

Qualifications

Douglas Snow – Retired Architect

- • **Former Half Moon Bay Planning Commissioner**
- • **Former Chair of Design Review for Coastsides; Emerald Hills and Half Moon Bay**
- • **Participant and Contributor in creating Design Review Standards for the Coastsides**
- • **Former Planner and Designer at William Periera and Associates (The Transamerica building was designed while there)**

- **Participant and Contributor to the master plan for Downtown Laguna Beach**
- **Author of Zone For Hotels in Laguna Beach**
- **Designed and Painted the HMB Rotary's 100th Anniversary Mural on the HMB City Hall Building with Local Artist, Randie Marlow**

In Summary, my 40 year career as an Architect has been that of working in and studying small Coastal Towns. Princeton-by-the-Sea is like a small Coastal Town.

Randie Marlow's

Images & Digital Design

Graphic Designer/Photographer

650.455.2663

www.randiemarlow.com

<http://www.coastalartsleague.com/artists/RandieMarlow/randiemarlow.htm>