

SUMMARY ABATEMENT ORDER AND NOTICE OF HEARING

April 12, 2023

Luella Mae Riley and Richard E Riley
PO BOX 6391
Concord, CA 94524

RE: 1505 McGinness Avenue
APN: 488-07-029

AGENDA ITEM:	4a
HEARING DATE	April 27, 2023
HEARING TIME:	6:30 p.m.
HEARING PLACE:	City Hall, Council Chambers 200 E Santa Clara Street San Jose, CA 95113

TO THE PROPERTY OWNER AND ALL OTHER PERSONS HAVING ANY LEGAL INTEREST IN THE ABOVE DESCRIBED PROPERTY LOCATED IN THE CITY OF SAN JOSE:

Please be advised that after inspections of the above described property by field investigators of the Code Enforcement Division, it has been determined that the property was found to be imminently dangerous based on the following conditions: vacant and unsecured, and showing signs of break ins. In order to abate the imminent danger, the Code Enforcement Division found it necessary to secure the home by boarding two windows and installing two side fences to prevent entry into the rear yard.

The costs of the abatement actions, including the total cost of the actions taken and any allowable inspection fees, will be invoiced to the property owner. The invoice shall be paid within 30 days from the date that the invoice is mailed. Failure to pay the invoice amount may result in the imposition of an assessment and a lien against the property in accordance with San Jose Municipal Code Section 17.02.350.

Any person having any record, title or legal interest in the property may appear and protest the abatement action taken as identified in this Notice of Hearing at the time and place specified above. Please be advised that pursuant to San Jose Municipal Code Section 17.02.120, the City Manager may file in the Office of the County Recorder a certificate declaring the property a Public Nuisance. Failure to file a written protest prior to the hearing date or to appear at such hearing will constitute a failure to exhaust the administrative remedies.

Should you have any questions regarding this matter, please contact Jason Gibilisco, Code Enforcement Supervisor, at (408) 535-7864.

Rachel Roberts

Rachel Roberts, Deputy Director
Planning, Building and Code Enforcement

Enclosure

OWNER: LUELLA MAE RILEY
AND RICHARD E RILEY
PO BOX 6391
CONCORD, CA 94524

AGENDA ITEM: 4a
HEARING DATE: April 27, 2023
HEARING TIME: 6:30 p.m.
HEARING PLACE: City Hall, Council
Chambers 200 E Santa Clara Street

ADDRESS: 1505 McGinness Avenue
APN: 488-07-029

INSPECTION REPORT

Status of Property

The residential property located at 1505 McGinness Avenue, San Jose, CA 95127 (“subject property”) is a vacant, abandoned single-family house. The house has been broken into on several occasions. A summary abatement was performed on January 28, 2021, that included:

1. Securing two rear windows
2. Installing plywood fence at side yards to prevent entry to rear yard

San Jose Municipal Code Violations

17.02.010 General provision

Any thing or condition, including but not limited to violations of this Code or state law, which threatens injury or damage to the health, safety, welfare or property of members of the public, which obstructs the free use of property of others or interferes with the comfortable enjoyment of life or property is a nuisance. Any thing or condition, including but not limited to violations of this Code or state law, which fails to provide minimum standards of safety and habitability in housing for any citizen of the city is a nuisance. Such nuisances are prohibited within the City of San José and no person shall create or participate in the creation or maintenance of such a nuisance.

17.72.030 Prohibition of property blight

- A. No person, whether as owner, agent, manager, operator, lessee, tenant, sublessee, or occupant in possession of a property, shall maintain a blighted property or cause or permit property to be maintained as a blighted property.
- B. No person, whether as owner, agent, manager, operator, lessee, sublessee, tenant or occupant of a property, shall take any action or allow any action to be taken at that property in violation of any provision of this chapter or any order issued pursuant to the provisions of this chapter.

17.72.040 General conditions

The presence of any one or more of the following conditions on property constitutes property blight:

- A. Any condition that is detrimental to the public health, safety or general welfare or that constitutes a public nuisance as defined in California Civil Code Section 3480;
- B. Any condition of deterioration or disrepair that creates a substantial adverse impact on neighboring properties.

17.72.400 Abatement Actions

Whenever the city manager determines that a property is blighted property, the city manager may require or take any necessary abatement or other enforcement actions to cause the property blight to be abated in accordance with the provisions of this Code, or by any other lawful means. The city manager may determine that temporary corrective measures are required prior to the time that permanent abatement or other enforcement actions are instituted.

17.72.410 Summary abatement - Imminent danger

- A. Any condition of property blight which is reasonably believed by the city manager to be imminently dangerous to the life, limb, health or safety of the occupants of the property or to the public may be summarily abated by the city manager, in accordance with the procedures of Chapter 17.02 of this title.
- B. Actions taken to abate imminently dangerous conditions may include, but are not limited to repair or removal of the condition creating the danger and/or the restriction from use or occupancy of the property on which the dangerous condition exists or any other abatement action determined by the city manager to be necessary.

17.72.505 Unsecured building or structure

Any building or structure that is unsecured constitutes property blight. A building or structure is unsecured when either of the following conditions exist:

- A. The building or structure is inhabited, occupied or used without the consent of the owner or the agent of the owner; or
- B. Unauthorized persons can readily gain entry to the building or structure without the consent of the owner or the agent of the owner.

17.72.515 Attractive nuisance

Any property that is unsecured and constitutes an attraction to children or a harbor for vagrants, criminals or other unauthorized persons, or is in a condition such that persons can resort thereto for the purpose of committing a nuisance or unlawful act constitutes property blight.

Chronology

- 4/12/13 Code Enforcement received a complaint alleging that the property was vacant with overgrown vegetation.
- 4/30/13 –
1/25/21 The home was confirmed to be vacant and the property was enrolled and monitored in the Neglected and Vacant Building Program. Numerous and consistent inspections occurred during this time and the property was found to be in violation on several occasions. Several attempts to contact the property owner were made with no success.
- 1/26/21 Inspector Greg Peacock inspected the property and confirmed the property to be unsecured. He issued an Official Warning Notice to inform the owners to secure the home within 24 hours. See true and correct photographs and copy of the Official Warning Notice attached hereto as **EXHIBIT A**
- 1/28/21 Inspector Peacock inspected the property and confirmed the property was still unsecured. He notified city contractor Tucker Construction to secure the property. Tucker Construction secured two windows and created two side yard fences to prevent access to rear yard. See true and correct photographs, and Tucker Construction invoice attached hereto as **EXHIBIT B**.
- 2/1/21 Inspector Peacock researched the Santa Clara County Assessor records and confirmed the property is owned by Luella Mae Riley and Richard E Riley, and the mailing address on record is PO BOX 6391, Concord, CA 94524. See true and correct copy of the Grant Deed attached hereto as **EXHIBIT C**.
- 2/2/21 -
11/16/21 Inspector Peacock continued to monitor the property.
- 11/17/21 The case was reassigned to Inspector Brigitte Villagomez.

11/18/21 –
3/16/23

Inspector Villagomez continued to inspect the property and the property is currently registered in the Vacant and Neglected Monitoring Program. The property is owned by Luella Mae Riley and Richard E Riley, and the mailing address on record is PO BOX 6391, Concord, CA 94524. See true and correct copy of the Grant Deed attached hereto as **EXHIBIT C**.

CODE ENFORCEMENT STAFF RECOMMENDATIONS

Staff recommends that the San Jose Appeals Hearing Board uphold the abatement actions taken by the City of San Jose to secure the property and invoice the property owner the costs of the abatement actions, including the total cost of the actions taken and any allowable inspection fees.

ATTESTING STATEMENT OF CODE ENFORCEMENT INSPECTOR

1. I am the Code Enforcement Inspector for the City of San Jose assigned to investigate the potential Municipal Code Violations at 1505 McGinness Avenue that are the subject of this Inspection Report.
2. I have prepared and reviewed this Inspection Report and can attest to the truth of the matters stated above.

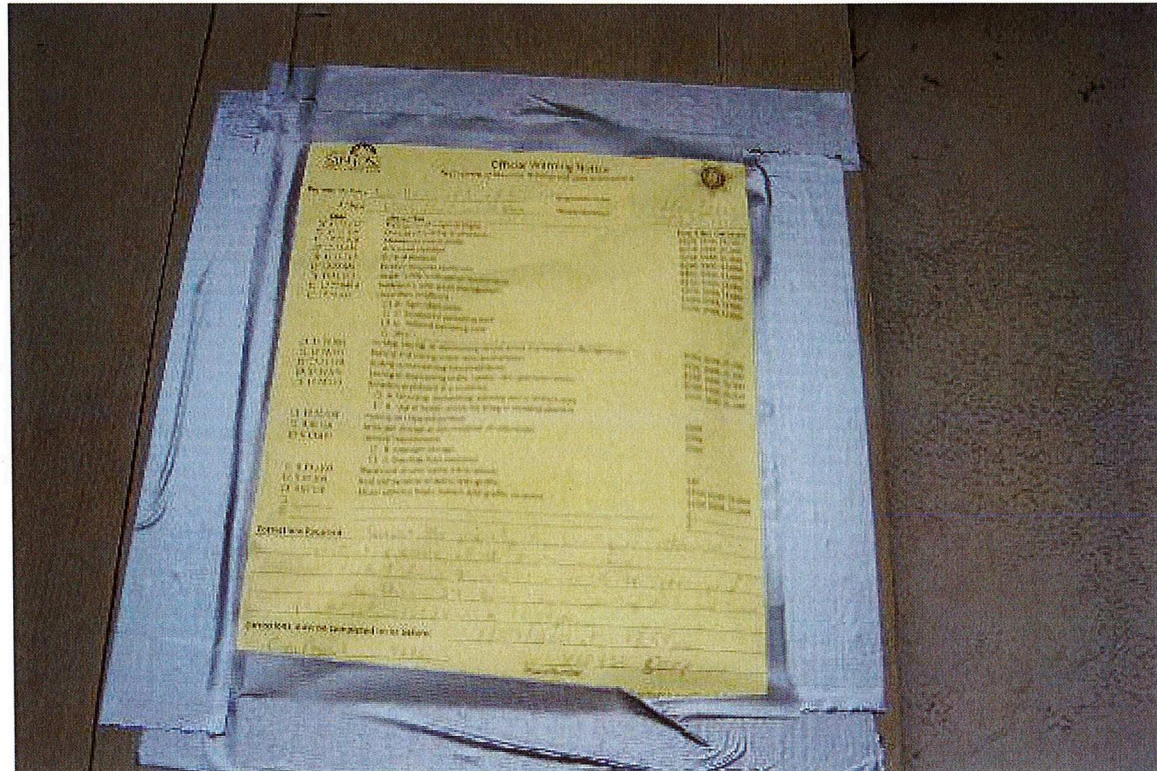


Jason Gibilisco
Code Enforcement Supervisor

Exhibit A



1-26-21 Front door to home with Official Warning notice posted



1-26-21 Close up photo of Official Warning Notice



Official Warning Notice
 Department of Planning, Building and Code Enforcement



Responsible Party: Luella Mae Riky + Richard E. Riky Inspection Date: 1/26/2021
 Address: 1505 McGinness Ave Phone Number: 408 623-5015

Code	Description	Fine if Not Corrected
<input checked="" type="checkbox"/> 17.72.030	Prohibition of property blight	\$250 , \$500, \$1,000
<input checked="" type="checkbox"/> 17.72.505	Unsecured building or structure	\$250 , \$500, \$1,000
<input type="checkbox"/> 17.72.510	Abandoned construction	\$250, \$500, \$1,000
<input checked="" type="checkbox"/> 17.72.515	Attractive nuisance	\$250 , \$500, \$1,000
<input checked="" type="checkbox"/> 17.72.520	State of disrepair	\$250 , \$500, \$1,000
<input checked="" type="checkbox"/> 17.72.525	Exterior property conditions	\$250 , \$500, \$1,000
<input type="checkbox"/> 17.72.530	Single-family landscaping requirements	\$250, \$500, \$1,000
<input type="checkbox"/> 17.72.545 A	Inadequate solid waste management	\$250, \$500, \$1,000
<input type="checkbox"/> 17.72.550	Hazardous conditions	\$250, \$500, \$1,000
	<input type="checkbox"/> B. Sight obstruction	
	<input type="checkbox"/> C. Unsecured swimming pool	
	<input type="checkbox"/> D. Polluted swimming pool	
	<input type="checkbox"/> Other	
<input type="checkbox"/> 17.72.555	Parking, storing, or maintaining certain items at a residence (Refrigerators)	\$250, \$500, \$1,000
<input type="checkbox"/> 17.72.565	Parking and storing motor vehicles and boats	\$250, \$500, \$1,000
<input checked="" type="checkbox"/> 17.72.570	Storing or maintaining household items	\$250 , \$500, \$1,000
<input checked="" type="checkbox"/> 17.72.575	Storing or maintaining boxes, lumber, dirt, and other debris	\$250 , \$500, \$1,000
<input type="checkbox"/> 17.72.580	Activities prohibited at a residence	\$250, \$500, \$1,000
	<input type="checkbox"/> A. Wrecking, dismantling, painting cars in setback area	
	<input type="checkbox"/> B. Use of motor vehicle for living or sleeping quarters	
<input type="checkbox"/> 17.72.600	Parking on Unpaved surfaces	\$100
<input type="checkbox"/> 9.10.410	Improper storage or accumulation of solid waste	\$500
<input type="checkbox"/> 9.10.430	General requirements	\$500
	<input type="checkbox"/> B. Improper storage	
	<input type="checkbox"/> E. Overflow from container	
<input type="checkbox"/> 9.10.1100	Placement of solid waste (early setout)	\$25
<input type="checkbox"/> 9.57.300	Real and personal property with graffiti	\$250, \$500, \$1,000
<input type="checkbox"/> 9.57.310	Motor vehicles, boats, trailers with graffiti on street	\$250, \$500, \$1,000
<input type="checkbox"/>		\$
<input type="checkbox"/>		\$

Corrections Required: Secure the property by boarding or otherwise
restricting access at the 2 rear windows.
Install fencing to restrict access to the rear yard
within 24 hours from posting date and time.
Posted at 1/26/2021 at 13:55pm

Corrections must be completed on or before: 1/27/2021 at 13:55pm
 Inspector Name and Badge #: Greg Pearce 082E Phone Number: 408 623-5015

Exhibit B



1-28-21 Front of property with city contractor in driveway



1-28-21 Two rear windows to home unsecured



1-28-21 Rear windows secured



1-28-21 Right side of property secured with plywood fencing



1-28-21 Left side of property secured with plywood fencing

TUCKER CONSTRUCTION INC

1725-D LITTLE ORCHARD ST
SAN JOSE CA 95125
(408) 287-1424 FAX (408) 287-1448
LIC.#454738

Invoice # 29429

Accounting Department
Code Enforcement
200 E. Santa Clara St. Tower 3
San Jose, Ca 95113

Date: March 24, 2021 Job No.: 13234

Job Name:

Job Location: 1505 Mc Ginness Ave

pbce.adminacctg@sanjoseca.gov

Description	Amount
Date of Service: January 28, 2021	
Ordered by Greg Peacock	
Boarded up 2 windows and two gates	
Labor: 3 hrs @ 82.01	246.03
Material: 6 3/4" Sheets	372.00
2- 2x 4's	14.00
Contractors Fee:	57.90
Total	\$ 689.93
Note: Increase in material cost due to lumber costs doubling.	

Exhibit C

<p>RECORDING REQUESTED BY RICHARD E. RILEY</p> <p>MAIL TAX STATEMENT TO INSURANCE COMPANY 1505 MCGINNESS AVENUE SAN JOSE, CA 95127</p> <p>WHERE RECORDED MAIL TO RICHARD E. RILEY 1505 Mc Ginness Avenue San Jose, CA 95127</p> <p>OFFICE NO. REFERENCE NO.</p>	<p style="text-align: right;">5561009</p> <p>FILED FOR RECORD AT REQUEST OF <i>Richard E. Riley</i> Feb 23 3 43 PM '77</p> <p>OFFICIAL RECORDS SANTA CLARA COUNTY RECORDER & MAIL REGISTRATION RECORDERS</p> <p style="text-align: center;">C 620 PAGE 392</p>	<p style="text-align: center;">C 620 PAGE 392</p> <p style="text-align: center;">300</p>
<p>GRANT DEED (INDIVIDUAL)</p>		
<p>RICHARD E. RILEY</p> <p>FOR A VALUABLE CONSIDERATION, I / HEREBY GRANT TO LUCILLA MAE RILEY and Richard E. Riley</p> <p>the real property in the County of <u>Santa Clara</u> State of California, described as:</p> <p>Lot 71 Tract # 1260 Bunnyside Acres Filed in the Office of Records of Santa Clara County, State of California on May 12, 1954 in Book 50 of Maps Pages 4 to 8 Inclusive. Commonly known as 1505 Mc Ginness Avenue, San Jose, California.</p>		
<p>Dated: February 23, 1977</p> <p>STATE OF CALIFORNIA COUNTY OF <u>Santa Clara</u> On <u>February 23, 1977</u> before me, the undersigned, a Notary Public in and for said County and State, personally appeared: RICHARD E. RILEY</p> <p>known to me to be the person whose name is subscribed to the within instrument and acknowledges that he executed the same.</p> <p>WITNESS my hand and official seal.</p> <p><i>Richard E. Riley</i> Notary Public in and for said County and State.</p>	<p><i>Richard E. Riley</i> RICHARD E. RILEY</p>	<p>Notary Seal</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> <p>OFFICIAL SEAL ROBERT HENNINGTON JONES Notary Public - Commission SANTA CLARA COUNTY My Commission Expires Dec 30, 1983 Sacramento, No. 341422</p> </div>
<p>MAIL TAX STATEMENT AS DIRECTED ABOVE</p>		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

CASE NAME: CITY OF SAN JOSE v Luella Mae Riley and Richard E Riley

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 200 E. Santa Clara Street, San Jose, California 95113, and I am employed in the county where the service described below occurred.

On April 12, 2023, I caused to be served the within:

SUMMARY ABATEMENT AND NOTICE OF HEARING

Regarding real property located at: 1505 McGinness Avenue

by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service the same day listed above in the ordinary course of business.

I further declare that the name and address as shown on the envelope is as follows:

Party Served:
Luella Mae Riley and Richard E Riley
PO BOX 6391
Concord, CA 94524

Party's Attorney:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **April 12, 2023**, at San Jose, California.


Regina Lizaola
Staff Specialist