

ORDINANCE NO. 1254

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA MAKING ADMINISTRATIVE AND PROCEDURAL AMENDMENTS TO PORTIONS OF CHAPTERS 2.12 (COUNTY AUDITOR), 2.88 (APPEALS), 5.20 (CLEANING OF SEPTIC TANKS), 5.40 (PEDDLING AND SOLICITING), 8.16 (NOISE CONTROL REGULATIONS), AND 13.15 (GROUNDWATER CONSERVATION) OF THE NAPA COUNTY CODE

The Board of Supervisors of the County of Napa, State of California, ordains as follows:

SECTION 1. Due to the implementation of PeopleSoft, and since Government

Code Section 29742 allows the Board of Supervisors, upon recommendation of the Auditor, to provide by ordinance that the three-day waiting period shall not apply to any claims or to specified classes of claims held by the Auditor's office prior to issuance of a warrant for certain emergency travel situations, Section 2.12.020 (Travel expense warrant issuance conditions) of Chapter 2.12 (County Auditor) of the County Code is hereby amended to read in full as follows:

2.12.020 Warrant issuance conditions.

The county auditor-controller may issue his warrant on the county treasury in amounts necessary for any claims he/she finds to be a correct and legal charge for expenses even though the claim for such expenses has not been on file in his office at least three days, as is otherwise required by Government Code Section 29742.

SECTION 2. To shorten the time when a decision on appeal becomes final to better

coordinate with deadlines with California Environmental Quality Act and shorten time frames within which legal challenges must be brought, Section 2.88.090 (Hearing – Conduct and procedures – Decision) of Chapter 2.88 (Appeals) of the Napa County Code is hereby amended to read in full as follows:

2.88.090 Hearing--Conduct and procedures--Decision.

A. In hearing the appeal the board shall exercise its independent judgment in determining whether the decision appealed was correct. If the hearing before the approving authority was recorded, electronically or by a certified court reporter and notice of that hearing had been given in the manner set forth in Section 18.136.040, the decision of the board on appeal shall be based on a review of the documentary record, including a transcription of the hearing, and such additional evidence as may be presented which could not have been presented at the time the

decision appealed was made. No other evidence shall be permitted to be presented except as provided in subsection (B) of this section. If the hearing held before the approving authority was not recorded electronically or by a certified court reporter, or if notice of the hearing was not required to be given in the manner set forth in Section 18.136.040, the hearing on appeal shall be heard de novo.

B. If the hearing before the approving authority was recorded electronically or by a certified court reporter then upon request by the appellant or any interested party and upon a showing of good cause, the board may permit additional evidence to be presented which could have been presented at the time the decision appealed from was made but was not or may order that the matter be heard de novo.

C. The board, following close of the hearing on appeal, may affirm, reverse, or modify the decision being appealed, or may remand the matter to the approving authority for further consideration, additional findings, advisory report to the board within forty days of the remand, or other appropriate action consistent with the decision of the board. If the matter is remanded to the approving authority for an advisory report to the board within forty days of the remand, the hearing on appeal shall remain open and the board shall close the hearing and render its final decision on the appeal only after reviewing the advisory report or, if no report is submitted within the forty-day period, following expiration of such forty-day period.

D. A decision on the appeal shall be rendered by the board within thirty calendar days of the close of the hearing except that if the board renders a tentative decision within thirty calendar days of the close of the hearing and refers the matter to its legal counsel for preparation of proposed findings, such proposed findings shall be returned to the board and the board shall thereupon adopt its final findings and decision on the appeal within thirty calendar days following such referral.

E. No building, environmental management or other ministerial permit shall be issued for the purpose of authorizing construction permitted in consequence of the final decision of the board until expiration of the period within which a motion to reconsider must be made, or until the date of the decision of the board on reconsideration of the decision, whichever is later.

F. The decision on appeal shall be final two working days following the date the board takes its final vote to grant or deny the appeal at a public meeting, except that if reconsideration is initiated pursuant to Section 2.88.110, the decision on appeal shall be final on the date the board takes its final vote on the reconsideration. The date of the decision shall not be the date the clerk or any officer, body or department notifies the appellant of the decision of the board and the date of decision shall not relate back to the date of the decision by the approving authority, unless a regulation of the county expressly provides otherwise.

SECTION 3. To shorten the time when a decision on appeal becomes final and the time for filing for reconsideration expires to better coordinate with deadlines with California Environmental Quality Act and shorten time frames within which legal challenges must be brought, Section 2.88.110 (Reconsideration of decision – Fees) of Chapter 2.88 (Appeals) of the Napa County Code is hereby amended to read in full as follows:

2.88.110 Reconsideration of decision--Fees.

A. Reconsideration of the decision of the board on an appeal may be initiated by request of a member of the board or as the result of a petition for reconsideration being filed by any interested person. The right to petition for judicial review shall not be affected by the failure of any person to seek reconsideration. Any such petition must be filed with the clerk and shall include payment of a filing fee in the amount approved by resolution of the board. The power to initiate a reconsideration by the filing of a petition or by request by a member of the board shall expire two working days following the date the board announced its decision on the appeal pursuant to subsection (D) of Section 2.88.090.

B. Upon receipt by the clerk of a petition for reconsideration or initiation of such reconsideration by request of a member of the board, the clerk shall set the matter for hearing and give notice of the hearing on reconsideration at least ten calendar days prior to the date set for the hearing, with such notice otherwise given in the same manner as notice was given of the hearing on the appeal. Written notice of the hearing on the reconsideration shall also be given by the clerk at least ten calendar days prior to the date set for the hearing to any other persons who filed a written request for such notice, accompanied by payment of a fee in the amount approved by resolution of the board, prior to ten calendar days before the date set for the hearing.

C. The grounds for reconsideration are limited to one or more of the following which shall be stated in the petition for reconsideration, if reconsideration is initiated by other than a member of the board, and the petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration:

1. The evidence before the board on the appeal does not justify the findings of fact in the decision on the appeal;

2. The findings of fact in the decision on appeal do not support the decision of the board on the appeal;

3. The petitioner has discovered new evidence material to a decision contrary to the decision of the board on the appeal which the petitioner could not, with reasonable diligence, have discovered and produced at the hearing on the appeal;

4. Some other factor renders the decision of the board so unjustified or inappropriate as to require a further hearing before the board, and such other factor could not have been discovered or produced by the appellant or an interested person at the hearing on appeal.

D. At the hearing to consider the petition or motion for reconsideration, the petitioner or requesting member of the board shall be given an opportunity to demonstrate that one or more of the grounds identified in subsection (C) exist. A representative of the approving authority and any other interested persons shall be given an opportunity to respond. The board shall then vote to determine whether or not it wishes to reconsider its previous decision.

E. If the board decides to reconsider its decision, the hearing reconsidering the appeal shall be commenced immediately. At the hearing the board shall choose, at the outset, whether to limit the hearing to the record, to permit additional evidence to be presented by any interested party or to hear the matter de novo. Where the matter is not heard de novo, the board may in its discretion order the transcripts of the appeal hearing to be prepared. If the membership of the board has changed since the appeal, the matter shall be heard de novo unless transcripts of the appeal hearing are prepared. The hearing may be continued from time to time at the discretion of the board.

F. After receiving all evidence accepted pursuant to subsection (E) and hearing the arguments of all interested persons, the board shall close the hearing and render within thirty

calendar days its decision reconsidering the appeal. This decision of the board shall be final and conclusive.

SECTION 4.

Certain provisions and citations to Chapter 5.20 (Cleaning of Septic Tanks) are outdated and need to be revised, therefore Sections 5.20.020 through 5.20.110 of Chapter 5.20 (Cleaning of Septic Tanks) of the Napa County Code are hereby amended to read in full as follows:

5.20.020 Permit--Required.

It is unlawful for any person, firm, corporation or institution to do any of the following without a permit issued by the director of environmental management or his duly authorized representative:

- A. Pump wastewater from septic tanks, cesspools, grease traps, grease interceptors, seepage pits, wastewater holding tanks or wastewater ponds.
- B. Provide and/or service portable toilets.

5.20.030 Permit--Application.

The director of environmental management may require any or all of the following items of information before a permit is issued for the activities listed in Section 5.20.020:

- A. Business name, and if the business name is a fictitious business name, the true name of the owner of the business;
- B. Business Owner(s) name(s);
- C. Business and mailing address;
- D. Phone Number;
- E. Vehicle registration number (license plate number), State of California carrier number for commercial haulers, make and model of the vehicle(s) to be permitted;
- F. Written approval from the disposal site(s);
- G. A copy of the certified tank capacity in gallons from the Department of Weights and Measures, or other approved sealer of weights and measures, for each vehicle to be permitted; and
- H. A five thousand dollar security, in a form acceptable to Napa County Counsel, as outlined in Section 5.20.090 of this Code.

5.20.040 Permit--Issuance conditions.

A permit for those activities listed in Section 5.20.020 may be approved and issued by the director of environmental management only after:

- A. The requirements of Section 5.20.030 have been met;
- B. An inspection of the equipment to be used by the Napa County Department of Environmental Management has been performed; and
- C. The operator has demonstrated a satisfactory knowledge of sanitary practices, emergency and cleanup procedures, and of the laws and ordinances affecting human health.

5.20.050 Permit Revocation or Suspension and appeal.

Any permit issued under this chapter may be revoked or suspended by the issuing director of environmental management of the county for cause on ten days' notice to the permittee, which notice shall be served by certified mail, return receipt requested, or in person at the last known place of business. The permittee may appeal such revocation or suspension to the board of supervisors pursuant to the procedure set forth in Chapter 2.88 of this code. If the revocation or suspension is so appealed, the revocation or suspension shall not be effective unless and until the action of the director is upheld by the board, except that if the director has found and determined that revocation or suspension is necessary to protect the people and environment of the county from immediate hazard to their health and safety, then the revocation or suspension shall be effective immediately following the action of the director and shall remain in effect until the action of the director is reversed by the board on appeal. The decision of the board shall be final and judicial review thereof shall be pursuant to Sections 1094.5 and 1094.6 of the Code of Civil Procedure.

5.20.060 Permit--Fee.

An application for a permit pursuant to this chapter shall be accompanied by that fee established by resolution of the board of supervisors.

5.20.070 Term of permit.

Permits for those activities outlined in Section 5.20.020 shall be valid for a period of one year from the date of issuance. Permits may be renewed after the requirements of Section 5.20.040 have been met.

5.20.080 Changes of address.

A change of address of any permittee, including a member of a partnership which is permitted and of the place of business thereof, shall be reported to the director in writing by registered mail by the permittee within two days after such change of address.

5.20.090 Permit--Security.

Every application for a permit pursuant to this chapter shall be accompanied by security in the amount of no less than five thousand dollars as an assurance that the applicant will well and faithfully perform all duties and obligations required by Sections 117400 to 117450 of the Health and Safety Code of the state, this chapter, and such terms, conditions, orders and directions as the county director of environmental management, or his duly authorized representative, may deem necessary for the protection of human health and comfort and the environment pursuant to Section 5.20.100 of this code and Section 117405 of the Health and Safety Code of the state. The security shall be in one or more of the following forms, which shall constitute a trust fund not subject to levy or attachment by any creditor of the permittee until released by the county and any document evidencing such security shall so provide:

- A. A bond or bonds by one or more duly authorized corporate sureties authorized to do business in the state;
- B. A deposit with the county treasurer of cash or negotiable bonds of the kind approved for securing deposits of public moneys;
- C. An instrument of credit, in a form acceptable to the county counsel, from a financial institution subject to regulation by the state or federal government, pledging that funds constituting the required amount of the security are on deposit and guaranteed for payment;

D. A letter of credit, in a form acceptable to the county counsel, issued by a financial institution subject to regulation by the state or federal government, guaranteeing that all or any portion of the funds available pursuant to the letter of credit will be paid to and upon the written demand of the county director of environmental management and that such written demand need not present any documentation of default or loss as a condition of payment;

E. Assignment to the county of a certificate of deposit with any financial institution subject to regulation by the state or federal government, in a form acceptable to the county counsel, and payable to the county director of environmental management upon written demand of the director. If this form of security is utilized by the permittee, the amount of the certificate of deposit shall be increased to include the largest penalty which might be assessed for early withdrawal in the event demand by the director should occur during the term of the certificate of deposit. Accrued interest may be withdrawn by the permittee at such times as permitted without penalty by the terms of the certificate and shall not constitute part of the security.

5.20.100 Permittee statement filing requirements.

A. Applicants may be permitted under such terms, conditions, orders and directions as the director of environmental management of the county may deem necessary for the protection of human health and comfort and the environment.

B. The director is empowered to require any and all persons who are permitted pursuant to this chapter to file with the director at any time and at such frequency or intervals as determined necessary, a statement giving the name and address of the owner or tenant of each of the premises where a septic tank, cesspool, grease trap, grease interceptor, sewage seepage pit, wastewater holding tank, wastewater pond, and/or the provision or service of a portable toilet that has been serviced by said permittee, and said statement shall also describe in precise terms the place where the wastewater shall have been disposed of, the date, and by whom. The director may require such statements to be sworn to before a notary.

5.20.110 Vehicle identification and equipment.

A. The business name and phone number shall be permanently affixed on both sides of the vehicle in, plain, legible letters and numbers at least four inches high, and shall be visible at all times. The certified capacity of the tank in gallons shall be permanently affixed on both sides of the tank in plain, legible numbers a minimum of four inches high and shall be visible at all times. The capacity as shown shall be that approved and certified by the sealer of weights and measures of the county, or other approved sealer of weights and measures.

B. A minimum of fifty feet of garden hose, a bucket and detergent shall be carried on each pumping vehicle. All pumping hoses must be cleaned out into the truck tank or into the septic tank, chemical toilet, cesspool, grease interceptor, seepage pit, wastewater holding tank or wastewater pond being pumped, and not on the surface of the ground. The customer's hose shall not be used.

C. There shall be carried on each unit at all times a sufficient quantity of chloride of lime or other chlorine product for disinfection of hose and areas where accidental spillage of sewage might occur.

SECTION 5.

Since Peddler Permits are approved by the Conservation,

Development and Planning Department and expire on December 31st of the year of issuance and the

Department of Environmental Management issues an annual health permit that expires one year after the application processing and approval date, the different expiration dates may cause confusion for the applicant and a duplication of efforts by each department. To simplify the approval and expiration process for the departments as well as the public, provide a more efficient permit process, and increase interdepartmental coordination and service to those engaged in Peddling and Soliciting, Section 5.40.080 (Permit – Term - Renewal) of Chapter 5.40 (Peddling and Soliciting) of the Napa County Code is hereby amended to read in full as follows:

5.40.080 Permit--Term--Renewal.

All permits shall be approved for one year and shall expire on the same date as the required annual health permit issued by the department of environmental management. A permit may, without further investigation, be renewed upon payment of the appropriate fee within one month of expiration, provided that renewal may be conditioned by the director on appropriate review and approval as provided in subsections (A)(1) through (A)(3) of Section 5.40.070.

SECTION 6. To add the Napa County Sheriff and his designated representatives to the persons authorized to enforce the noise ordinance, Section 8.16.030 (Administration and enforcement--Authority and procedures) of Chapter 8.16 (Noise Control Regulations) of the Napa County Code is hereby amended to read in full as follows:

8.16.030 Administration and enforcement--Authority and procedures.

A. The noise control program established by this chapter shall be administered by the director of environmental management or by his designated representatives, and shall be enforced by the director of environmental management and the county sheriff or their designated representatives unless otherwise expressly provided herein.

B. In order to implement and enforce this chapter, and for the general purpose of noise abatement and control, the director of environmental management, as county noise control officer (hereinafter "NCO"), shall have, in addition to any other authority vested in him, the power to:

1. Studies. Conduct or cause to be conducted studies, research and monitoring related to noise, including joint cooperative investigation with public or private agencies, and the application for and acceptance of grants;

2. Education. Conduct programs of public education regarding the cause, effect and general methods of abatement and control of noise and the actions prohibited by this chapter, and the procedures for reporting violations. Public interest groups shall be encouraged in related public information efforts;

3. Training. Provide for training of field inspectors and other technical personnel concerned with noise abatement, in conformance with standards for technical qualifications as established by the State Office of Noise Control;

4. Coordination and Cooperation.
 - a. Coordinate the noise-control activities of all county departments,
 - b. Cooperate where practicable with all appropriate state and federal agencies,
 - c. Cooperate where practicable with appropriate county and municipal agencies;
5. Public and Private Projects. On all public and private projects which are likely to cause noise in violation of this chapter and which are subject to mandatory review or approval by other departments:
 - a. Review for compliance with the intent and provisions of this chapter,
 - b. Require sound analyses which identify existing and projected noise sources and associated noise levels;
6. Inspections. Upon presentation of proper credentials, enter upon and inspect any private property of place, at any time when granted permission by the owner, or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, an inspection warrant may be obtained from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this chapter may exist. Such inspection authority may include the conduct of any necessary tests;
7. Zoning Changes. Prior to the approval of any zoning change:
 - a. Review the potential noise impact of the zoning change by identifying existing and projected noise sources and the associated sound levels,
 - b. Recommend the imposition of adequate control measures on noise sources identified.
- C. Duties of the Noise Control Officer:
 1. Develop measurement standards and procedures which will further the purposes of this chapter;
 2. Develop administrative procedures which will provide for effective enforcement of this chapter;
 3. Investigate and pursue possible violations of this chapter;
 4. Where appropriate under this chapter, delegate functions to personnel within his department;
 5. Assist in or review the total transportation planning of the county, including planning for new roads and highways, bus routes, airports, and other systems of public transportation, to insure that proper consideration is taken with regard to the impact of sound levels and that the policies set forth in the noise element are adhered to;
 6. Provide ongoing assistance to local agencies in determining possible mitigation measures for current or forecast noise problems;
 7. Make recommendations to the board of supervisors for modifications or amendments to this chapter to insure consistency with all state and federal laws and regulations, and as may otherwise be deemed appropriate;
 8. Administer noise program grants, funds and gifts from public and private sources, including the state and federal governments.

SECTION 7. To clarify the prohibition of a ministerial permit under this section if public water is available from a public water system, Section 13.15.030 (Classification of applications) of Chapter 13.15 (Groundwater Conservation) of the Napa County Code is hereby amended to read in full as follows:

13.15.030 Classification of applications.

Applications described in Section 13.15.020 shall be classified as follows for the purpose of determining whether a groundwater permit is required by this chapter:

A. Applications exempt from groundwater permit requirement.

1. In the case of uses permitted without a use permit under any provision of this code, the applications or development set forth in Section 13.15.020 are exempt from the requirement that a groundwater permit must be obtained unless the application or development:

a. Is for a project located on a parcel included within those groundwater deficient areas depicted on Map 13-1 and is not otherwise specifically exempted; or

b. Is to develop or improve an on-site or off-site water supply serving more than a single contiguous parcel; or

c. Where the development or improvement, regardless of the number of parcels served, is able to connect to a public water supply.

2. Applications to develop or improve an on-site or off-site water source serving agriculture are also exempt from the requirement of a groundwater permit under this chapter to the extent provided in Section 13.15.040.

3. Applications to construct or develop rainwater harvesting or graywater recycling systems when that is the sole purpose of the project and the resulting harvested or recycled water will be used to augment existing groundwater sources or as the sole source of water for use at that site.

4. The director may declare a site-specific emergency exempting an application from the requirement of a groundwater permit under this chapter for the following reasons:

a. Based upon substantial evidence in the record that the applicant's water source is no longer capable of supplying the amount of water needed to serve an existing legal use and/or the water source has lost its water supply.

b. Based upon substantial evidence in the record, it is determined by the director that the water source is a threat to public health or groundwater contamination and cannot reasonably be treated or corrected.

In either case, the existing well shall be properly destroyed prior to the use of the new well.

5. Minor improvements to a water system.

6. Convenience improvements to a water system.

B. Applications requiring use permits.

In the case of proposed development requiring the issuance of a use permit pursuant to any provision of this code, applications which propose to develop, improve or utilize an on or off-parcel groundwater source in conjunction with such development are not required to obtain a groundwater permit under this chapter. Groundwater review of such applications shall occur in accordance with the county's procedures to obtain a use permit.

C. Applications involving a ministerial approval.

1. Applications for a single-family dwelling unit and associated landscaping, when such residence will be the only use on the parcel, shall be issued a groundwater permit providing they meet the following requirements:

a. The permittee shall install a meter on the well serving the parcel to measure all groundwater used on the parcel. The configuration of the installation shall conform to a drawing prepared by the permittee and shall conform to the technical standards set forth by the Director of Public Works.

b. On or near the first day of each month the permittee shall read the water meter and provide this data to the Director of Public Works during the first week of April and October of each year. The permittee shall also grant to the Director of Public Works, the right to access and verify

the operation and readings of the meters and well levels at any reasonable time during regular working hours.

c. The permittee shall be limited to 0.60 acre feet of water per year or such other amount as may be adopted by the board by resolution.

This groundwater permit shall not be available when other dwellings, accessory uses, agricultural development or other discretionary uses exist on the property or when water from an approved public water system is available to the property. In such cases, a groundwater permit must first be obtained pursuant to the procedures set forth in Section 13.15.060 et seq. Any permittee that qualifies for a groundwater permit issued pursuant to this section may instead apply for a groundwater permit pursuant to the procedures set forth in Section 13.15.060 et seq.

2. Applications for agricultural land re-development that will utilize groundwater on parcels included within those groundwater deficient areas depicted on Map 13-1 shall be issued a groundwater permit providing that they meet the following requirements:

a. The permittee shall install a meter on all wells or water supply and distribution systems serving the parcel to measure all groundwater used on the parcel. The configuration of the installation shall conform to a drawing prepared by the permittee and shall conform to the technical standards set forth by the Director of Public Works.

b. On or near the first day of each month the permittee shall read the water meter and provide this data to the Director of Public Works during the first week of April and October of each year. The permittee shall also grant to the Director of Public Works the right to access and verify the operation and readings of the meters and well levels at any reasonable time during regular working hours.

c. The permittee shall be limited to an average of 0.30 of acre feet of water per acre per year or such amount as may adopted by the board by resolution. This limitation shall be calculated as the average water used over a three-year period with no yearly use exceeding the acre foot of water per acre per year allotment by more than fifteen percent.

Any permittee that qualifies for a groundwater permit issued pursuant to this section may instead apply for a groundwater permit pursuant to the procedures set forth in Section 13.15.060 et seq.

SECTION 8. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 9. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 10. A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa

Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing ordinance was first introduced and read at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 1st day of March, 2005, and passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 8th day of March, 2005, by the following vote:


AYES:	SUPERVISORS	WAGENKNECHT, LUCE, MOSKOWITE and DILLON
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	DODD



DIANE DILLON, CHAIR
Napa County Board of Supervisors

ATTEST: PAMELA A. MILLER,
Clerk of the Board

By: 

<p>Approved by the Napa County Board of Supervisors</p> <p>Date: March 8, 2005</p> <p>Processed by:  Deputy Clerk of the Board</p>
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<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <i>Margaret L. Woodbury</i>, Chief Deputy County Counsel (E-Signature)</p> <p>By: <u>E-Signature by Sue Ingalls</u> County Code Services</p> <p>Date: March 1, 2005</p>

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