

Additions are underlined.
Deletions are ~~struck through~~.
Revision markers are noted in left or
right margins as vertical lines.

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NAPA COUNTY,
STATE OF CALIFORNIA, TO EXPAND THE RADIUS FROM 300 FEET TO
1,000 FEET FOR NOTICE OF PUBLIC HEARINGS BEFORE THE PLANNING
COMMISSION OR ZONING ADMINISTRATOR ON DISCRETIONARY LAND
USE APPLICATIONS BY AMENDING SECTIONS 2.88.010 (DEFINITIONS),
2.88.050 (APPEAL PACKET - INFORMATION TO BE SUBMITTED),
18.106.060 (REQUIRED PUBLIC AND PRIVATE NOTIFICATION), 18.119.220
(TELECOMMUNICATION FACILITIES - PUBLIC NOTICE), 18.124.130 (USE
PERMIT MODIFICATIONS - PROCEDURE - SIZE LIMITATION), 18.132.050
(CERTIFICATE OF PRESENT EXTENT OF LEGAL NONCONFORMITY -
APPLICATION - PROCEDURE), AND 18.136.040 (PUBLIC HEARING
BEFORE COMMISSION - NOTICE)**

WHEREAS, state law and the County's zoning laws require that notice of public hearings before the Planning Commission or Zoning Administrator on certain discretionary land use applications including, but not limited to, conditional use permits and modifications thereto, variances, rezones and zoning text amendments, telecommunications permits, viewshed applications and certificates of legal nonconformity be mailed to all property owners located within three hundred (300) feet of the project parcel;

WHEREAS, because of large parcel sizes and the rural nature of unincorporated Napa County, the three hundred foot noticing requirement does not always capture property owners that may be potentially impacted by a proposed project;

WHEREAS, both the Planning Commission and Planning, Building and Environmental Services (PBES) Department staff have heard an increase in concerns expressed by neighbors regarding the extent of public notice provided on projects subject to Planning Commission or Zoning Administrator review;

WHEREAS, expanding the noticing radius will allow those neighbors most likely to be impacted by a project to have an opportunity to participate in the process. Citizen involvement in the decision making process often times results in a better project and one that is more harmonious with the surrounding neighborhood;

WHEREAS, on May 21, 2014, the Planning Commission directed PBES Department staff to prepare an ordinance amending the County's public noticing requirements changing the radius from three hundred (300) feet to one thousand (1,000) feet and to provide notice of pending discretionary land use applications at the time the application is filed;

WHEREAS, adoption of this Ordinance will expand the radius of property owners who get notice of public hearings on discretionary land use applications;

WHEREAS, on November 19, 2014, at a duly noticed public hearing, the Planning Commission heard and considered the merits of this Ordinance. Upon close of the public hearing, the Planning Commission recommended that the Board adopt this Ordinance;

WHEREAS, to accomplish the Commission's direction of providing earlier notice of pending discretionary land use applications that are on file, staff has prepared a resolution accompanying this Ordinance that amends the County policy manual to provide early notice;

WHEREAS, for ease of administration and consistency purposes, this Ordinance also expands the public notice requirement for discretionary land use appeals in Chapter 2.88 of the County Code from three hundred (300) feet to one thousand (1,000) feet; and

WHEREAS, the Board finds that expanding the noticing practices as provided in this Ordinance will provide additional opportunity for public participation in the land use process and is an appropriate way to balance the public's interest in land use changes without significantly increasing applicant costs or processing times.

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

SECTION 1. Section 2.88.010 (Definitions) of Chapter 2.88 (Appeals) of the Napa

County Code is amended to read in full as follows:

2.88.010 Definitions.

The definitions contained in Title 18 of this code, as amended, shall be fully applicable to this chapter except as hereinafter otherwise defined. Such definitions include the following:

A. "Appellant" means any interested person filing an appeal under this chapter.

B. "Approving authority" means the officer, director, agency, commission, subsidiary board of the county, department or board of appeals which made the decision being appealed.

C. "Board" means the board of supervisors of Napa County.

D. "Clerk" means the clerk of the board of supervisors of Napa County.

E. "Hearing" means any proceeding at which a person may attend and present testimony, including but not limited to, public hearings and noticed public hearings.

F. "Interested person" means:

1. For an appeal of a decision made for the following discretionary land use permits: conditional use permits and modifications thereto, variances, rezones and zoning text amendments, telecommunications permits, viewshed applications and certificates of legal nonconformity, "interested person" means the approving authority, any person who testified or offered evidence at a hearing or other proceeding at which the matter being appealed was considered, and all persons, including businesses, corporations or other public or private entities,

shown on the last equalized assessment roll as owning real property within one thousand feet of any property which is the subject of the appeal.

2. For all other appeals, "interested person" means the approving authority, any person who testified or offered evidence at a hearing or other proceeding at which the matter being appealed was considered, and all persons, including businesses, corporations or other public or private entities, shown on the last equalized assessment roll as owning real property within three hundred feet of any property which is the subject of the appeal.

3. "Interested person" includes the appellant and the permittee, if different, whether or not they appeared at the hearing, but does not include other persons unless such persons testified or offered evidence at the hearing other than by merely affixing their signatures to petitions submitted at the hearing.

4. Notwithstanding the foregoing subsections (F)(1) through (F)(3), where the appeal is of a decision granting a lot line adjustment, a minor modification of a use permit, or a conditional certificate of compliance, "interested person" includes any member of the public.

G. "Noticed public hearing" means a hearing that is noticed in accordance with Section 18.136.040 of this code, or any similar provision of law.

H. "Permit" means any permit, certificate, license or other entitlement for use, or any determination, decision or action made or taken by any approving authority under this code, including any environmental determination made pursuant to the California Environmental Quality Act (CEQA) and state or county guidelines or other regulations adopted to implement CEQA.

I. "Permittee" means the person who has applied for the permit which is the subject of the appeal.

J. "Working day" means a day when the office of the clerk of the board of supervisors is open for business. Weekends, county holidays as well as days when the office is closed for regular business due to a declared or posted emergency do not constitute working days.

SECTION 2. Section 2.88.050 (Appeal packet - Information to be submitted) of Chapter

2.88 (Appeals) of the Napa County Code is amended to read in full as follows:

2.88.050 Appeal packet - Information to be submitted.

A. The appeal packet shall include all of the following, which must be received by the clerk within ten working days following the submittal of a notice of intent to appeal. If the notice of appeal is filed by facsimile or electronic mail the ten-day period in which to file the appeal packet begins to run from the date of that filing even if the filing fee is submitted in a timely manner at a later point in time.

1. The name and address of the permittee or subject of the decision being appealed;
2. The name and address of the appellant, if different;
3. Identification and date of the decision being appealed, including identification of the permit or decision involved;
4. Identification of the specific factual or legal determination of the approving authority which is being appealed, and the basis for such appeal. Any issue not raised by the appellant in the appeal packet shall be deemed waived;

5. If the basis of the appeal is, in whole or in part, an allegation of prejudicial abuse of discretion on the part of the approving authority, that there was a lack of a fair and impartial hearing, or that there were no facts presented to the approving authority to support the decision, such grounds of appeal and the factual or legal basis for such grounds must be expressly stated or the board shall deem such bases and grounds for appeal waived by the appellant.

B. If the decision appealed from involves real property the appeal packet shall contain the following, in addition to the above:

1. A title insurance company report issued no earlier than six months prior to the date of the decision being appealed that certifies, by name, address and assessor's parcel number, the owners of all real property located ~~within three hundred feet of any real property which is the subject of the appeal;~~ as follows:

a. Within one thousand feet of any real property which is the subject of the appeal of a discretionary land use permit as provided in subsection (F)(1) of Section 2.88.010; or

b. Within three hundred feet of any real property which is the subject of the appeal as provided in subsection (F)(2) of Section 2.88.010.

2. A copy of the assessor's map book pages current as of the date of the decision being appealed that shows all real property which is the subject of the appeal and all properties in the property owners list described in subsection (B)(1);

It shall be appellant's sole responsibility to ensure that all required items are submitted before the deadline. The clerk and/or county staff have been directed not to comment on or advise the appellant as to the completeness of the appeal. Therefore, the appellant shall not rely on statements made by the clerk or county staff.

SECTION 3. Section 18.106.060 (Required public and private notification) of Chapter 18.106 (Viewshed Protection Program) of the Napa County Code is amended to read in full as follows:

18.106.060 Required public and private notification.

A. Within seven days of the issuance of a tentative decision that the project is subject to administrative approval under Section 18.106.040, the director shall give notice of his tentative decision, including the date on which the tentative decision will become final, which date shall be ten calendar days following the date notice of the tentative decision is mailed.

1. The notice shall be provided to the city or town closest to where the project is proposed to be built and to all public or private property owners located within one thousand ~~three hundred~~ feet of the outer perimeter of the property on which the project would be constructed as shown on the latest equalized assessment roll.

2. The tentative decision shall be final once the period identified in the notice has expired unless an appeal has been filed by the applicant or any interested person pursuant to Chapter 2.88 of this code, in which case the tentative decision shall become final only if and when the appeal is withdrawn, dismissed or denied. If the appeal is granted, in whole or in part, the decision of the board on appeal shall become final in the manner and within the time set forth in Chapter 2.88.

B. At least ten days prior to a decision by the zoning administrator or the commission under Section 18.106.050 or 18.106.070, notice of a public hearing shall be

provided to the city or town closest to where the project is proposed to be built and to all property owners located within ~~one thousand three hundred~~ feet of the outer perimeter of the property on which the project would be constructed as shown on the latest equalized assessment roll.

SECTION 4. Section 18.119.220 (Telecommunication facilities - Public notice) of Chapter 18.119 (Telecommunication facilities, satellite dishes, and other antennas) of the Napa County Code is amended to read in full as follows:

18.119.220 Telecommunication facilities - Public notice.

In addition to the public notice required under ~~subsection (B) of~~ Sections 18.124.040~~(B)~~ and ~~subsection (D) of Section~~ 18.140.030~~(D)~~, the following special noticing shall be provided:

A. Notice of installation of any mockup shall be provided ~~by placing a display advertisement of at least one-eighth page via an 1/8 page display ad~~ clearly indicating the location of the facility, the tentative hearing date for the proposal, and the period during which the mock-up will be present. This notice shall be published three days prior to the erection of the mockup in a paper of general circulation serving the area potentially impacted. In addition this notice shall be mailed to all property owners within ~~one thousand three hundred~~ feet of the parcel(s) on which the facility including any private access way is to be located.

B. Notice of the public hearing on a use permit authorizing the establishment or modification of a telecommunication facility shall be provided to the operators of all telecommunication facilities within one mile of the subject parcel via mailing of the standard legal notice prepared in response to ~~subsection (B) of~~ Section 18.124.040~~(B)~~.

C. Notice of the approval of a site plan authorizing the establishment or modification of, or the renewal of a permit for, a telecommunication facility shall be provided ~~by publishing a~~ ~~via a~~ legal notice ~~published~~ in a newspaper of general circulation serving the area potentially impacted. Said notice shall clearly indicate the location of the facility and the limited grounds for appeal. It shall be mailed to all property owners within ~~one thousand three hundred~~ feet of the parcel on which the facility is located and all persons known to have telecommunication facilities within one mile of the site. Mailing/publication of said notice shall start a ten working day appeal period.

SECTION 5. Section 18.124.130 (Use permit modifications - Procedure - Size limitation) of Chapter 18.124 (Administrative Permits) of the Napa County Code is amended to read in full as follows:

18.124.130 Use permit modifications - Procedure - Size limitation.

A. Except as otherwise provided in subsection (B) of this section, modifications to an approved use permit shall be processed in the same manner and in compliance with the procedures set forth herein for use permits and appeals, including notice and the payment of applicable permit application fees.

B. Upon receipt of a written request from the holder of a use permit, the zoning administrator may approve minor non-controversial modifications to approved use permits after giving notice of intent to approve or deny, but without a public hearing in regard to project design or permit conditions which do not affect the overall concept, density, intensity or environmental impact of, or substantially alter or delete any environmental mitigation measure for the project. Consistent with the foregoing, the zoning administrator may approve changes in location and/or size of approved structures or portions thereof, provided that, the zoning administrator shall not consider or approve a minor modification if the result of the approval of the requested minor modification would result in any structure or the aggregate of all approved structures being increased more than twenty-five percent in size or one story in height based on the size allowed under the approved use permit. Equipment enclosures whose permanent installation outdoors was approved by use permit are not subject to this size limitation.

1. Notice of intent to approve or deny, for purposes of this subsection, shall include a general explanation of the matter to be considered, a general description, in text or by diagram, of the location of the subject real property, and a statement that the zoning administrator intends to approve or deny the requested modification on a certain date not less than ten calendar days after the date of mailing of the notice unless a member of the public requests a public hearing prior to that date.

2. Notice of intent, for purposes of this subsection, shall be mailed or delivered as follows:

a. To the owner of the subject real property or the owner's duly authorized agent and to the project applicant if she/he is neither the owner of the property nor the owner's duly authorized agent; and

b. To all owners of real property, including businesses, corporations or other public or private entities, as shown on the latest equalized assessment roll within ~~one thousand~~~~three~~ ~~hundred~~ feet of the real property that is the subject of the proposed zoning change. In lieu of utilizing the assessment roll, the records of the county assessor or tax collector which contain more recent information than the assessment roll may be used.

3. If any member of the public requests a public hearing during the comment period, then the zoning administrator will provide public notice in accordance with Section 18.136.040 and conduct a public hearing.

C. Upon receipt of a written request from the holder of a use permit, the director may administratively approve very minor, non-controversial modifications to approved use permits without public notice, including, the following:

1. Additions of covers over previously approved pads;

2. Small (less than ten percent) changes in square footage or building footprint;

3. Realignment of internal circulation roads;

4. An extension of use permit expiration time not to exceed one year beyond the then-operative date of use permit expiration as established in conformance with this chapter, provided that the director shall not approve more than three such extensions of any one use permit or use permit modification approval; and

5. Similar items at the discretion of the director.

SECTION 6. Section 18.132.050 (Certificate of present extent of legal nonconformity - Application - Procedure) of Chapter 18.132 (Legal nonconformities) of the Napa County Code is

amended to read in full as follows:

18.132.050 Certificate of present extent of legal nonconformity - Application - Procedure.

- A. The owner of a legal nonconformity:
1. At any time may apply for a certificate determining the present extent of the legal nonconformity; or
 2. Upon notification by the director in the event of a dispute over voluntary abandonment, entitlement to issuance of a building or other permit, or intensity and/or scope of the nonconformity, shall apply for a certificate determining the present extent of the legal nonconformity.
- B. Such application shall be filed with the department in the form prescribed by the department, and shall be accompanied by that fee adopted by resolution of the board of supervisors.
- C. In the capacity as zoning administrator, the director shall hold a public hearing to determine the present extent of the legal nonconformity. Such hearing shall be held in accordance with the procedures set forth in Section 18.124.040. The owner shall have the burden of proof to establish the original legal nonconforming status of the use, structure or combination thereof; the extent of any repair, maintenance, restoration, rebuilding, rehabilitation, remodeling, redesign or rearrangement which has occurred which conforms to the standards set forth in Section 18.132.030; and the extent of any voluntary abandonment of the legal nonconformity since originally established.
1. For residential projects, the public hearing may be waived and the director is authorized to render an administrative decision if, after providing notice of the intended decision and right to request a public hearing to property owners within one thousand three hundred feet of the project parcel, the director finds that no member of the public has requested said hearing, and that no additional information is required to render a decision.
 2. For residential projects, where the sole question raised is the existence of a residential structure within required yards, road setbacks, or stream setbacks, the director is authorized to render an administrative decision without notice or public hearing if the director finds that no additional information is required to render a decision.
- D. At the conclusion of the hearing, the zoning administrator shall determine the present extent of the legal nonconformity and issue a certificate setting forth such determination.
- E. The determination of the zoning administrator may be appealed to the board of supervisors in accordance with the procedures set forth in Chapter 2.88.
- F. Within thirty calendar days of issuance of the certificate or, in the event of appeal, within thirty calendar days of the final decision of the board of supervisors on appeal, the zoning administrator shall file a true and correct copy of the certificate with the Napa County assessor.
- G. The procedure set forth in this section shall also be used to determine the present extent of those certain winery and winery-related uses permitted without a use permit pursuant to subsection (G) of Section 18.16.020 or subsection (H) of Section 18.20.020. For purposes of such determination, all references in this section to "legal nonconformity" shall be replaced by the term "uses permitted pursuant to subsection (G) of Section 18.16.020 or subsection (H) of Section 18.20.020."

SECTION 7. Section 18.136.040 (Public hearing before commission - Notice) of

Chapter 18.136 (Amendment) of the Napa County Code is amended to read in full as follows:

18.136.040 Public hearing before commission - Notice.

A. The commission shall hold a public hearing on any amendment filed pursuant to Section 18.136.020. Notice of the date, time and place of said hearing, the fact that the hearing will be held before the planning commission, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing shall be published once at least ten calendar days prior to the hearing in a newspaper of general circulation, published and circulated in the county.

B. Notice meeting the informational requirements of subsection (A) of this section shall also be mailed or delivered at least ten calendar days before the hearing as follows:

1. To the owner of the subject real property or the owner's duly authorized agent and to the project applicant;

2. To any person who has filed a written request therefor with the commission. Such a request may be submitted at any time during the calendar year and shall apply for the balance of such calendar year. Such a request shall be accompanied by that fee established by resolution of the board of supervisors;

3. To each local agency expected to provide water, sewage, streets, roads, schools or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected;

4. To all owners of real property, including businesses, corporations or other public or private entities, as shown on the latest equalized assessment roll within ~~one thousand~~~~three~~ ~~hundred~~ feet of the real property that is the subject of the proposed zoning change. In lieu of utilizing the assessment roll, the records of the county assessor or tax collector which contain more recent information than the assessment roll may be used.

C. In the event that the number of owners to whom notice would be sent pursuant to subsection (B)(1) or (4) of this section is greater than one thousand, in lieu of mailed or delivered notice, notice may be provided to those persons identified in subsection (B)(1), (3) and (4) of this section by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the county at least ten days prior to the hearing. Providing notice pursuant to this section shall not relieve the commission of the duty to notify any person who has requested special notice pursuant to subsection (B)(2) of this section.

D. Subsection (B)(1), (3) and (4) of this section shall not apply to an amendment which does not affect the permitted uses of real property within the county.

E. In addition to the notice required by this section, the commission may give notice of the hearing in any other manner it deems necessary or desirable.

F. Failure to receive the notice required by this section shall not invalidate any amendment that is adopted.

G. Any hearing may be continued from time to time at the discretion of the commission.

SECTION 8. General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not

applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

SECTION 9. Pursuant Chapter 4, Title 7, commencing with Section 65800, of the California Government Code, this Ordinance is consistent with the following policies and goals of the 2008 General Plan: Goal AG/LU-6 (Encourage investment by the private sector and balance the rights of individuals with those of the community and the needs of the environment) and Policy AG/LU-107 (Ease access to information and understand code requirements).

SECTION 10. If any section, subsection, sentence, clause, phrase or word of this Ordinance 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 11. This Ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 12. 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 recommended for adoption and public hearing held thereon before the Napa County Planning Commission at a special meeting of the Commission on the 19th day of November, 2014. The Planning Commission's recommendation was considered by the Board of Supervisors and this Ordinance was introduced and read at a regular meeting of the

Board of Supervisors of Napa County, State of California, held on the ____ day of _____, 2014, and was passed at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the _____ day of _____, 2014, by the following vote:

AYES: SUPERVISORS _____

 NOES: SUPERVISORS _____

 ABSTAIN: SUPERVISORS _____

 ABSENT: SUPERVISORS _____

 MARK LUCE, Chairman
 Napa County Board of Supervisors

ATTEST: GLADYS I. COIL
 Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM Office of County Counsel	Approved by the Napa County Board of Supervisors
By: _____ (by e-signature) Deputy County Counsel	Date: _____
By: _____ (by e-signature) County Code Services	Processed by: _____
Date: _____	Deputy Clerk of the Board

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, SOUTH COUNTY CAMPUS, 2741 NAPA VALLEY CORPORATE DRIVE, BUILDING 2, NAPA, CALIFORNIA 94558 ON _____.

_____, DEPUTY
 GLADYS I. COIL, CLERK OF THE BOARD