

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 THE COUNTY
OF NAPA, STATE OF CALIFORNIA, AMENDING SECTION 18.08.260
DEFINING DWELLING UNIT AND ADDING A NEW SECTION 18.104.410
PROHIBITING TRANSIENT COMMERCIAL OCCUPANCIES OF
DWELLING UNITS TO THE NAPA COUNTY CODE**

WHEREAS, under the Napa County General Plan, amended June, 2008, two overriding goals of Napa County are to preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County, and to concentrate urban uses in the County's existing cities and town and urbanized areas (Goal AG/LU-1 and 2); and

WHEREAS, in support of these goals, the General Plan contains numerous policies which direct that agriculture is the primary land use in the County, minimize conflicts arising from encroachment of urban uses into agricultural areas, limiting new non-agricultural uses or developments, concentrate urban uses and residential growth in the incorporated cities and town which can provide necessary and expected public services and not conflict with the agricultural heritage of the County (Policy AG/LU-1, 3, 12, 22, 23); and

WHEREAS, additionally the General Plan contains policies which direct the County to promote development concepts that create flexibility, economy, and variety in housing without resulting in significant environmental impacts and without allowing residences to become commercial short-term guest accommodations (Policy AG/LU-1, 3, 12, 22, 23, 33, Action Item 33.1); and

WHEREAS, the commercial use of dwelling units on an overnight transient basis of less than 30 days occupancy is a commercial activity often incompatible with maintaining the agricultural nature and rural ambiance of the County, and those areas devoted to rural residential use, and may create adverse impacts on surrounding residential uses including, but not limited to, increased demand for public services because of higher densities than would otherwise likely occur, the likelihood of late night noise and glare emanating from parties, increased visitor traffic on narrow roadways exceeding their capacity and the need to drive long distances to obtain visitor serving needs, and removes such dwellings from the potential of providing needed available housing stock for County residents; and

WHEREAS, the commercial use of dwelling units on an overnight transient basis of less than 30 days occupancy is currently a violation of the uses allowed in all zoning districts in Napa County, unless specifically stated otherwise in Title 18 of the Napa County Code; and

WHEREAS, this ordinance is declaratory of existing law with respect to commercial transient occupancies of dwelling units and will specifically enumerate and clarify in the County Code that commercial transient occupancies of dwelling units continue to be prohibited in all residential and agricultural zoning districts within the county, which is consistent with the objectives of the General Plan; and

WHEREAS, the Board of Supervisors determines that the enactment of this ordinance will ameliorate the above noted deleterious effects associated with transient commercial occupancies of dwelling units, and will advance and promote the health, safety, and general welfare of the County and its inhabitants.

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

SECTION 1. Section 18.08.260 (Dwelling unit) of Chapter 18.08 (Definitions)

of the Napa County Code to amended to read in full as follows:

18.08.260 Dwelling unit.

A. “Dwelling unit” means a room or connected rooms constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease ~~on a monthly or longer basis~~ for a period of 30 days or longer, physically separated from other rooms or dwelling units in the same structure, and containing independent cooking and sleeping facilities.

B. “Dwelling unit” does not include timeshare or vacation ownership arrangements as defined in Chapter 2 (commencing with section 11210) of Part 2 of Division 4 of the Business and Professions Code, including a dwelling unit owned by a corporation or club, including arrangements commonly referred to as corporate club memberships, private residence clubs, vacation home partnerships, vacation clubs, destination clubs, or condohotels, and used by individual shareholders or members by advance reservation or arrangement for a period of less than 30 consecutive days, and also does not include arrangements involving real property owned by more than twelve fee owners where any fee owner is entitled to exclusive occupancy of the dwelling unit or units for a period of less than 30 days in a given calendar year.

SECTION 2. A new Section 18.104.410 (Transient commercial occupancies of dwelling units prohibited) is added to Chapter 18.104 (Additional Zoning District Regulations) of the Napa County Code to read in full as follows:

18.104.410 Transient commercial occupancies of dwelling units prohibited.

A. Transient commercial occupancies of dwelling units are prohibited in all residential and agricultural zoning districts within the county.

B. Definitions. Unless otherwise defined in Chapter 18.08, the following definitions shall apply to this section:

1. “Commercial use” shall have the same meaning as commercial use in Section 18.08.170.

2. “Occupancies” means the use or possession or the right to the use or possession of real property or a portion thereof, including any dwelling unit, single family dwelling unit, guest cottage, or second unit, for dwelling, lodging or sleeping purposes. The right to use or possession includes any nonrefundable deposit or guaranteed no-show fee paid by a person, whether or not the person making the deposit actually exercises the right to occupancy by using or possessing any property or portion thereof.

3. “Transient commercial occupancies of dwelling units” means any commercial use of a dwelling unit for a period of time less than thirty consecutive days. It does not include occupancies associated with farm labor camps, residential care facilities, family day care homes, or legally permitted bed and breakfast establishments, hotels or motels.

D. Liability and Enforcement.

1. Any property owner, or authorized agent thereof, who uses or allows, or who knowingly arranges or negotiates for the use of, transient commercial occupancies of dwelling units in violation of this section shall be guilty of either an infraction or a misdemeanor.

2. Any property owner, or authorized agent thereof, who prints, publishes,

advertises or disseminates in any way, or causes to be printed, published, advertised or disseminated in any way, any notice or advertisement of the availability of transient commercial occupancies of dwelling units as prohibited by this section, shall be guilty of either an infraction or a misdemeanor.

3. In addition to the penalties set forth in subsections D.1. and .2 above, violators of this section may be subject to a public nuisance abatement action brought under the provisions of Chapter 1.20 and the civil penalty provisions of up to \$1,000 per violation per day as provided in Section 1.20.155.B, and subject to an unfair competition action brought pursuant to Business and Professions Code Section 17200 et.seq and the up to \$2,500 per violation civil penalty allowed thereunder.

4. Any person who uses, or allows the use of transient commercial occupancies of dwelling units prohibited by this section shall also be liable for the transient occupancy tax that would have been owed under Chapter 3.32 had the occupancy use been legal, including the penalty and interest provisions of Section 3.32.080.

5. The civil remedies and penalties provided by this subsection are cumulative to each other.

SECTION 3. The Director of Conservation, Development and Planning has determined that this ordinance would not have a significant effect on the environment and is exempt from the California Environmental Quality Act [See guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15061(b)(3)]. The project also will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, will not cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 (“Minor Alterations in Land Use Limitations”) which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

SECTION 4. Pursuant Chapter 4, Title 7, commencing with Section 65800, of the California Government Code, this Ordinance is consistent with the following goals and

policies of the 2008 General Plan: Agricultural Preservation and Land Use Goals AG/LU-1, 2, 5 and Policies AG/LU- 1, 3, 12, 20, 21, 22, 26, 32, 33, 34, and 35; Circulation Policy CIR-1; Community Character Goal CC-6 and 8 and Policies CC-31 and 36.

SECTION 5. 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 6. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 7. 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 introduced and public hearing held thereon before the Napa County Conservation, Development and Planning Commission at a regular meeting of the Commission on the ____ day of _____, 2009, and was passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the _____ day of _____, 2009, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

MARK LUCE, CHAIR
Napa County Board of Supervisors

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

By: _____

APPROVED AS TO FORM
Office of County Counsel
By: _____
Deputy County Counsel
By: _____
County Code Services
Date: _____

APPROVED BY THE NAPA
COUNTY
BOARD OF SUPERVISORS
Date: _____
Processed by: _____
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, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON CALIFORNIA ON

_____.

_____, DEPUTY

GLADYS I. COIL, CLERK OF THE BOARD