

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 NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, REMOVING SECTION 2.88.040 AND AMENDING SECTIONS 2.88.050, 2.88.060, 2.88.070, AND 2.88.080 OF CHAPTER 2.88, APPEALS, AND SECTION 3.32.100 OF CHAPTER 3.32, UNIFORM TRANSIENT OCCUPANCY TAX, REGARDING THE FILING AND CONTENTS OF APPEAL PACKETS AND THE INITIATION OF APPEALS

WHEREAS, the Napa County Code provides an opportunity for interested parties to appeal a decision made by county officials, including decisions to issue, deny, or condition permits, to the Board of Supervisors; and

WHEREAS, on August 8, 2023, the Board of Supervisors adopted an amendment to the Appeals chapter to address procedural difficulties for appellants and the Clerk of the Board and to simplify the process for payment of fees by allowing payment to the Clerk of the Board of Supervisors, rather than the Treasurer-Tax Collector. Additionally, the Board of Supervisors clarified the requirement that all arguments on appeal must be included in the appeal packet; and

WHEREAS, the Board of Supervisors now desires to simplify the appeals process further by eliminating the two-step filing process and removing the requirement to file a Notice of Intent to Appeal prior to filing the Appeal Packet.

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

SECTION 1. Section 2.88.040 (Notice of intent to appeal) of Chapter 2.88 (Appeals) of the Napa County Code is amended to read in full as follows:

2.88.040 [RESERVED] ~~Notice of intent to appeal.~~

~~A. — An appeal is commenced by filing a notice of intent to appeal along with payment of the accompanying fees with the clerk within ten working days of the decision. Payment of fees, as established by the then current board resolution establishing fees for appeals, shall be made by check made payable to "Napa County," or any other manner acceptable to the clerk. For purposes of this section, the first day of the period within which the notice of appeal may be filed shall be as follows:~~

- ~~1. — The first full calendar day following the decision maker's vote at a noticed public hearing or the public announcement of the decision being appealed if such an announcement was made at a noticed public hearing; or~~
- ~~2. — If the decision, or the announcement of the decision, was not made at a noticed~~

~~public hearing, five calendar days after the date a notice of decision is deposited in the U.S. mail by county staff and addressed to all persons or entities who are required by the applicable provision of this code or by the applicable provision of state or federal law to be notified of the decision.~~

~~———— B. ——— The notice of intent to appeal must be filed with the clerk in writing, and may be submitted by personal delivery or by first class U.S. mail, but must be delivered, transmitted, or mailed in such a manner as to be received by the clerk by the close of business on the working day specified in this chapter. As a record of the date that the notice of intent is filed, the clerk shall note or stamp the date of receipt on the notice of intent to appeal. For purpose of this subsection, "close of business" shall mean 2:00 p.m. Pacific Time. The clerk is not authorized to change, waive, or postpone the deadline under any circumstances.~~

~~———— C. ——— A notice of intent to appeal shall include a description, sufficient for reasonable identification of the subject of the appeal, of the name and nature of the permit that was the subject of the decision, the nature of the decision being appealed, the date of the decision being appealed, and the name, address, and telephone number of the appellant.~~

~~———— D. ——— If no notice of intent to appeal is filed with the clerk with respect to a decision within the time period set forth in this Section 2.88.040, the decision shall be deemed final and conclusive upon expiration of such time period.~~

SECTION 2. Section 2.88.050 (Appeal packet and payment of fees and costs—Time and manner of submissions.) of Chapter 2.88 (Appeals) of the Napa County Code is amended to read in full as follows:

2.88.050 Appeal packet and payment of fees and costs—Time and manner of submissions.

A. ~~An appeal is commenced by filing with the clerk of the board~~An appeal is commenced by filing with the clerk of the board~~If a notice of intent to appeal is timely filed, the appellant shall,~~ no later than 2:00 p.m. on the ~~twentieth tenth~~ working day after ~~the decision, the following:~~the date of submission of the notice of intent to appeal:

1. ~~Submit to the clerk a~~ complete appeal packet meeting the requirements of this Section 2.88.050; and
2. ~~Submit to the clerk p~~Payment of ~~any fee(s) required~~ the requisite fee for the filing and processing of appeals pursuant to the then current board resolution establishing fees or the then current policy manual for the applicable department, ~~excluding any fees already paid with the notice of intent to appeal filed pursuant to Section 2.88.040.~~ The amount of the fee shall be ~~relevant to the type of appeal being filed, calculated and requested by the clerk at the time the appeal packet is submitted, subject to the clerk's right to provide a more precise statement and supplemental payment request later.~~ Payment of any such fee(s) shall be made by check, made payable to "Napa County," or any other manner acceptable to the clerk.

B. ~~For purposes of this section, the first day of the period within which to file an appeal shall be as follows:~~

1. ~~The first full calendar day following the decision maker's vote at a noticed public hearing or the public announcement of the decision being appealed if such an announcement was made at a noticed public hearing; or~~
2. ~~If the decision, or the announcement of the decision is not made at a noticed public hearing, five calendar days after the date of decision is deposited in the U.S. mail by county staff and addressed to all persons or entities who are required by the applicable provision of this code or by the applicable provision of state or federal law to be notified of the decision.~~

C. If no appeal packet is filed with, or no payment of the fee is submitted to, the clerk with respect to a decision within the time period set forth in this Section 2.88.050, the decision shall be deemed final and conclusive upon expiration of such time period.

B.D. An appeal packet must be delivered to the clerk in hard copy format, or in an electronic format on a digital storage device, by personal delivery or by first class U.S. mail. If any part of appeal packet is submitted in an electronic format on a digital storage device, the appellant shall provide to the clerk an original, wet signature on the appeal packet form, within the same period allowed for the filing of the appeal packet. If any part of the appeal packet is submitted in an electronic format on a digital storage device, the appellant is responsible for ensuring that the data is accessible to the clerk.

C.E. The appeal packet shall include all of the following:

1. The name and address of the permittee or the person, organization, or entity whose use of property or activities were the subject of the decision being appealed;
2. The name and address of the appellant, if different, and a statement of (1) the nature of the appellant as a person or entity; and (2) the basis for the appellant's qualification as an interested person;
3. The names, addresses, telephone numbers, and email addresses of each person who shall be (a) the primary point of contact for appellant, and (b) the designated representative(s) of the appellant at the mandatory prehearing conference on the appeal and who has authority to speak for appellant on the procedural and evidentiary issues that will be discussed at the prehearing conference;
4. A description, sufficient for reasonable identification of the subject matter of the appeal, of the name of the permit or other matter that was the subject of the decision, the nature of the decision, and the date of the decision being appealed;
5. Identification and description of the specific factual or legal determination(s) made as part of the decision that are the focus of the appeal; and
6. A description of all asserted grounds for the appeal and all arguments, contentions and facts that the appellant believes support the appeal and/or show that the decision was in some manner erroneous. If the basis of the appeal is, in whole or in part, an allegation that the decision maker committed a prejudicial abuse of discretion or that there was a lack of a fair and impartial hearing, such grounds of appeal and the factual and legal bases for such assertions must be expressly stated in the appeal packet. Any grounds of appeal, assertions, or legal or factual arguments that are not set forth in the appeal packet shall be waived.

D.F. In addition to the requirements stated above, if the decision pertains to or affected use of, interests in, or activities upon real property the appeal packet shall also contain the following:

1. A report prepared by a title company, engineer, architect, radius search service, or ownership listing service, which identifies by name, address, and assessor's parcel number, the owners of all real property located within one thousand feet of any and all portions of the real property that is the subject of the appeal and which certifies by affidavit that the information contained in the report is accurate, complete, and current as of a date no earlier than six (6) months prior to the date of the decision being appealed; and
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 to which the list of property owners described in subsection (D)(1) of this Section

2.88.050 pertains.

E.G. It shall be appellant's sole responsibility to ensure that all required items and information required to be submitted as part of the appeal packet are submitted to the clerk 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 packet. Therefore, the appellant shall not rely on statements made by the clerk or county staff.

F.H. Receipt of the appeal packet by the clerk and/or county staff does not constitute a representation that the appeal packet is accepted as complete. The clerk may take a reasonable amount of time to determine whether the appeal packet is complete in accordance with this Section 2.88.050.

SECTION 3. Section 2.88.060 (Withdrawal of appeal.) of Chapter 2.88 (Appeals) of the

Napa County Code is amended to read in full as follows:

2.88.060 Withdrawal of appeal.

A. Automatic Withdrawal. An appeal filed pursuant to this chapter shall be deemed withdrawn and the decision of the decision maker shall be final and conclusive if any of the following occur:

1. ~~The appellant fails to timely file a complete appeal packet with the clerk;~~
2. ~~—~~The appellant fails to timely post any required fee(s), including any supplemental fee requested by the clerk pursuant to Section 2.88.100, below. This includes any failure of payment, such as a check that is denied for insufficient funds or a declined transaction;
32. The appellant fails to timely post any required transcript preparation costs, pursuant to Section 2.88.100, below;
43. The appellant fails to attend the mandatory prehearing conference without good cause as determined in the chair's sole discretion, or fails to comply with the requirements established at the prehearing conference or as set forth in Section 2.88.085.

B. Withdrawal by Appellant. The appellant may withdraw the appeal at any time by filing with the clerk a signed and written request to withdraw. Such a withdrawal is effective upon receipt by the clerk of a written request.

C. No Refund of Fees. In the event of a withdrawal, the appeal fee and any actual costs paid by appellant shall not be refunded. ~~any fees, including the filing fee, processing fees, and transcript costs incurred by the County, paid shall not be refunded.~~

SECTION 4. Section 2.88.070 (Hearing by the board.) of Chapter 2.88 (Appeals) of the

Napa County Code is amended to read in full as follows:

2.88.070 Hearing by the board.

Any appeal of a decision ~~for which a notice of appeal has been filed in the manner required by this chapter~~ shall be heard by the board unless withdrawn pursuant to Section 2.88.060. At the discretion of the board chair, multiple appeals of the same decision or related decisions may be consolidated for processing and hearing before the board.

SECTION 5. Section 2.88.080 (Scheduling and notice of the hearing; prehearing

conference.) of Chapter 2.88 (Appeals) of the Napa County Code is amended to read in full as

follows:

2.88.080 Scheduling and notice of the hearing; prehearing conference.

A. When a timely ~~notice of~~ appeal has been filed and ~~when a complete appeal packet and~~ all required fees have been timely submitted and posted with the clerk, the clerk shall schedule a hearing on the appeal at a regular or special meeting of the board held not less than twenty-five calendar days and not more than ninety calendar days after receipt of the complete appeal packet, as required by Section 2.88.050, above. The board may, in its sole discretion, open and continue the hearing to a date outside of the ninety-day period to ensure the availability and convenience of the board, county staff, and all parties to the appeal. If the appeal is required by state or federal law, or county regulations other than this chapter, to be held within a shorter period, the ninety-day period shall be reduced to the maximum number of days that may expire under such law or regulation before the appeal must be heard.

B. Unless a different requirement for giving notice of the appeal and board hearing or of the mandatory prehearing conference is specified by this code or by any applicable state or federal law or regulation, the clerk shall give notice of the appeal and of the date, time, and place of the hearing on the appeal at least nineteen calendar days before the hearing or the mandatory prehearing conference. Notice shall be by first class U.S. mail (postage paid), or by email, addressed to the parties below, and shall be effective when deposited in the mail or sent by email. Notice shall be provided to the following parties:

1. The appellant(s) and any person identified as the primary point of contact for the appellant or as the designated representative of the appellant, as set forth in Section 2.88.050(C)(3);

2. The applicant(s) or any beneficiary of the underlying permit or decision that is the subject of the appeal, if different than the appellant;

3. Any persons who have requested in writing that they be given notice of an appeal relating to the underlying permit or decision, if such persons have paid any fee imposed by resolution of the board to cover the cost of such notification; and

4. For any appeal pertaining to or affecting use of, interests in or activities upon real property, the owners of all real property located within one thousand feet of any real property that is the subject of the decision being appealed, using the report provided by the appellant pursuant to Section 2.88.050(D), above.

C. In addition to the notice of hearing on the appeal given pursuant to subsection (B), the clerk shall give notice to the decision maker and each county officer or department head who may be concerned with the permit or other action.

D. The county counsel, or their designee, shall arrange a mandatory prehearing conference, as required by Section 2.88.085 of this code and County Policy Manual, Part I, Section 8B, Rule 14.

SECTION 6. Section 3.32.100 (Appeal procedure.) of Chapter 3.32 (Uniform Transient

Occupancy Tax) of the Napa County Code is amended to read in full as follows:

3.32.100 Appeal procedure.

Any operator aggrieved by the decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the board of supervisors by filing ~~an a notice of~~

State of California

By: _____
JOELLE GALLAGHER, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: _____ Deputy County Counsel	Date: _____ Processed By:	By: _____
By: _____ Code Services	_____	
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, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON _____.

_____, DEPUTY
NEHA HOSKINS, CLERK OF THE BOARD