

ORDINANCE NO. 4354

**ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY
OF VENTURA REPEALING AND REENACTING SECTIONS 8114-3.6 AND
SECTION 8114-3.7 OF THE VENTURA COUNTY NON-COASTAL
ZONING ORDINANCE**

The Board of Supervisors of the County of Ventura ordains as follows:

Section 1: Chapter section 8114-3.6, Article 14, of Chapter 1 of Division 8 (Planning and Development) of the Ventura County Ordinance Code, is hereby repealed.

Section 2: Chapter section 8114-3.6, Article 14, of Chapter 1 of Division 8 (Planning and Development) of the Ventura County Ordinance Code, is hereby reenacted to read as follows:

Sec. 8114-3.6 - Notice of Violation and Notice of Noncompliance

For purposes of this section and section 81143-3.7, the following definitions apply: (a) "violation" means the lack of compliance with a provision of Division 8, Chapter 1 of the Ventura County Ordinance Code or any term or condition of any permit entitlement, variance or amendment thereto issued pursuant to this Chapter or any term or condition imposed and adopted as mitigation measures pursuant to the California Environmental Quality Act, including restrictive covenants; (b) "violator" means the owner of the property on which a violation exists and, if applicable, a permittee responsible in whole or in part for the violation. All notices required by this section shall be sent by first class mail to the last known address of the violator and shall be deemed served three days after the date of mailing.

Sec. 8114-3.6.1 - Notice of Violation

Whenever the Planning Director determines that a violation exists, the Planning Director shall send the violator a Notice of Violation. The Notice of Violation shall: 1) state the violation(s); 2) state how the violation(s) may be corrected; 3) advise that if the violation(s) is not corrected by the specified deadline, a Notice of Noncompliance may be recorded against the property in the Office of the County Recorder; 4) advise that all enforcement costs are recoverable pursuant to Section 8114-3.4; 5) advise that civil penalties may be imposed pursuant to Section 8114-3.7; and 6) advise that the determination that a violation exists may be appealed, but that the appeal must be filed in accordance with section 8111-7.

Sec. 8114-3.6.2 - Recorded Notice of Noncompliance

If the violation is not corrected pursuant to the Notice of Violation as determined by the Planning Director within the time allotted or if the violation is upheld after an appeal pursuant to section 8111-7, a Notice of Noncompliance may be recorded in the Office of the County Recorder. The Notice of Noncompliance shall describe the property and specify the Ordinance section(s) or permit terms or conditions violated. The Planning Director shall record a Release of Notice of Noncompliance with the Office of the County Recorder only if and after the violations have been fully corrected and all County's enforcement costs and fees have been paid to the satisfaction of the Planning Director. The violator must pay a fee for recordation of the Release of Notice of Noncompliance as determined in the adopted schedule of fees.

Section 3: Chapter section 8114-3.7, Article 14, of Chapter 1 of Division 8 (Planning and Development) of the Ventura County Ordinance Code, is hereby repealed.

Section 4: Chapter section 8114-3.7, Article 14, of Chapter 1 of Division 8 (Planning and Development) of the Ventura County Ordinance Code, is hereby reenacted to read as follows:

Sec. 8114-3.7 - Civil Administrative Penalties

Civil administrative penalties may be imposed for final violations. For purposes of this section, a violation, as defined in 8114-3, is "final" if the Notice of Violation issued pursuant to section 8114-3.6 is not appealed in accordance with section 8111-7 or, if properly appealed, the appeal process is complete and the Notice of Violation is upheld. All notices required by this section shall be sent by first class mail to the last known address of the violator(s), as defined in 8114-3.6, and shall be deemed served three days after the date of mailing. The Planning Director or his/her designees shall be Enforcement Officers authorized to impose civil administrative penalties as provided herein.

Sec. 8114-3.7.1 - Notice of Impending Civil Penalties

Once a violation is confirmed, a Notice of Impending Civil Penalties shall be served upon the violator separately, or as part of the Notice of Violation. The Notice of Impending Civil Penalties shall: (1) state the violation(s); (2) state a range of the amount of the impending daily civil penalty per violation; (3) state the date by which the violation must be corrected, which date shall not be less than thirty days from the date of service of the notice; and (4) advise that the civil penalties will begin accruing on a daily basis if the violation is not corrected by the date established in the notice. If the Planning Director determines that a violation creates an immediate danger to health or safety, penalties may be imposed after a period of time that is less than thirty days.

The date upon which the daily penalty will begin to accrue may be extended by the Planning Director upon a showing that the time frame allotted in the Notice of Impending Civil Penalties is not a reasonable period of time to correct the violation.

Sec. 8114-3.7.2 - Notice of Imposition of Civil Penalties

Once the violation is final and if it has not been corrected by the date stated in the Notice of Impending Civil Penalties or an amendment thereto, then a Notice of Imposition of Civil Penalties shall be served upon the violator.

The Notice of Imposition of Civil Penalties shall describe the property and state the following for each violation: (1) the amount of the penalty that will accrue daily per violation as determined pursuant to section 8114-3.7.4; (2) the date the penalty will begin accruing, which may be the same date the notice is served; (3) that the daily penalty will continue to accrue until the violation is corrected as determined by the Planning Director; (4) that the amount of the daily penalty may be increased in the future if the violation is not corrected; (5) that the accrued penalties are immediately due and owing and that a lien will attach to the property for all unpaid penalties; and (6) that the amount of the daily penalty may be administratively appealed in accordance with section 8114-3.7.5 within ten (10) days of the date of service of the Notice of Imposition of Civil Penalties.

Sec. 8114-3.7.3 - Notice of Increase in Civil Penalties

Notwithstanding an appeal of a previously imposed penalty pursuant to section 8114-3.7.5, the Enforcement Officer may increase the amount of the penalty if the violation continues uncorrected and the circumstances warrant an increase considering the factors set forth in section 8114-3.7.4. To impose the increase, the Enforcement Officer must first serve a Notice of Increase in Civil Penalties upon the violator that shall state: (1) the amount of the increase of the daily civil penalty; (2) the effective date of the increase, which date shall not be less than thirty days from the date of service of the notice; and (3) that the amount of the increase, if contested, may be appealed, but only in accordance with section 8114-3.7.5. The amount of the penalty then in effect prior to the increase may not be appealed.

Sec. 8114-3.7.4 - Factors Considered in Determining the Amount of Civil Penalties

The amount of the penalty imposed for each separate violation may be up to, but not exceed, \$1,000 per day. In determining the amount of the penalty, the Enforcement Officer shall consider the known relevant circumstances in light of various factors which include, but are not limited

to, the following: (1) the actual or potential extent of the harm caused; (2) the likelihood to cause harm; (3) the seriousness or gravity of the violation (i.e., the level of threat to property, health, or safety of people and animals or the environment); (4) whether the violation is subject to correction by obtaining a permit or cannot be corrected by permit; (5) the culpability of the violator in causing the violation; (6) the length of time over which the violation occurs; (7) the history of past violations, either of a similar or different nature, on the same or different property under the same ownership; (8) the cooperation of the violator in resolving the existing and past violations; (9) the financial burden to the violator; (10) the factors and policies set forth in the Civil Administrative Penalty Guidelines adopted by the Board of Supervisors; and (11) all other relevant circumstances.

Once imposed, the daily penalty will continue to accrue until the violation is corrected to the satisfaction of the Planning Director. The Planning Director may stay the imposition of penalties or decrease the amount of penalties, either temporarily or permanently, if the Planning Director determines that: (1) substantial progress is being made toward correcting the violation and that decreasing the penalties would further the goal of correcting the violation; or (2) circumstances exist that were either beyond the control of the violator or were unknown at the time the penalties were imposed and warrant the reduction or suspension of the penalties. If the amount of the civil penalties is modified or suspended, the Notice of Imposition of Civil Penalties shall be amended stating the modified terms and shall be served on the violator.

The daily civil penalty imposed for a violation that is prosecuted as an infraction by the District Attorney shall not exceed the amount of the maximum amount of fines or penalties for infractions set forth in Government Code sections 25132 subdivision (b) and 36900 subdivision (b).

Sec. 8114-3.7.5 - Administrative Appeal of Civil Penalties

If disputed, the amount of the penalty must first be contested by filing an administrative appeal as provided herein and as required by Government Code section 53069.4 before seeking judicial relief. Only the violator may challenge the amount of the penalty. Only a Notice, or Amended Notice, of Imposition of Civil Penalties or a Notice, or Amended Notice, of Increase in Civil Penalties may be appealed.

If an appeal is not timely filed, then the imposition of the penalties pursuant to the Notice, or Amended Notice, of Imposition of Civil Penalties or the Notice, or Amended Notice, of Increase of Civil Penalties, as the case may be, shall be final and no longer subject to appeal either administratively or judicially.

Appeals will be heard by a Hearing Officer selected by the Board of Supervisors or the County Executive Officer.

- a. Pre-Appeal Procedures and Requirements - An appeal must be filed with and received by the Planning Division no later than ten (10) days from the date of service of the notice or amended notice from which the appeal is taken. An appeal form shall be provided by the Planning Division upon request. In order to be deemed timely submitted, the appeal form must include the following: (1) the violation case number and date stated on the notice or amended notice being appealed; (2) the facts and bases supporting the appellant's position that the amount of penalties should be reduced; (3) the name and address of the appellant; and (4) the filing fee established by the Board of Supervisors.

At least ten (10) days prior to the date of the hearing, the appellant shall be notified by first class mail at the address stated on the appeal form of the location, time and date of the hearing.

A continuance may be requested in writing to the Hearing Officer which must be received no later than ten (10) days before the date of the hearing. If timely filed, the hearing date will be continued to the next scheduled hearing date and the appellant and Planning Division will be so notified.

- b. Hearing and Hearing Officer's Final Administrative Order - The jurisdiction of the Hearing Officer is limited solely to reviewing the amount of the penalty determined by the Enforcement Officer.

Both parties (appellant(s) and the County) may present relevant evidence in support of their contention of the proper amount of the penalty. The content of the County's files submitted to the Hearing Officer which may include, but is not limited to, the Notice of Violation, the Notice of Noncompliance, the Notice of Impending Civil Penalties, the Notice of Imposition of Civil Penalties and the Notice of Increase in Civil Penalties (if applicable), and any amendments thereto, shall constitute prima facie evidence of the facts stated therein.

If the appellant or the appellant's representative does not appear at the hearing, the Hearing Officer shall only consider, on behalf of the appellant, the evidence submitted with the appeal form and the evidence submitted by the appellant to the Hearing Officer ten (10) days prior to the date of the hearing.

The Hearing Officer must evaluate the evidence presented in light of the factors set forth in section 8114-3.7.4 and, based thereon, shall either affirm or reduce the amount of the daily penalty imposed by the Enforcement Officer for each day the penalties have accrued and may continue to accrue into the future. The amount of the daily penalty determined by the Hearing Officer shall continue to accrue until the violation is corrected as determined by the Planning Director or until the amount of the daily penalty is increased in accordance with section 8114-3.7.3.

The Hearing Officer's determination shall be set forth in a written order served upon the appellant by first class mail at the address stated on the appeal form submitted by the appellant. The order shall be considered the Final Administrative Order for purposes of Government Code section 53069.4.

Penalties shall continue to accrue while the appeal is pending. If some or all of the penalties have been paid and the Hearing Officer orders a reduction in the amount of the penalty that exceeds the total amount due and owing the County, including enforcement costs, then the County shall refund the difference to the person who paid the penalty unless penalties are continuing to accrue.

- c. Appeal of Hearing Officer's Final Administrative Order - Pursuant to Government Code section 53069.4 subdivision (b)(1), if the Final Administrative Order is contested, review must be sought in the Superior Court as a limited civil case within twenty (20) days after the date of service of the Final Administrative Order. A copy of the Notice of Appeal must be served on the County of Ventura, Planning Director either in person or by first class mail.

If no notice of appeal is timely filed with the Superior Court, the Final Administrative Order issued by the Hearing Officer shall be deemed confirmed and final.

Sec. 8114-3.7.6 Enforcement

A penalty that is final either by termination of appeal rights or by completion of the appeal process may be collected by any lawfully authorized means including but not limited to filing a civil action to recover the amount of the unpaid penalties.

In addition, the County shall have a lien against the subject property in the amount of the unpaid penalties accrued and to be accrued until the violation is corrected. The lien may be recorded in the Office of the County Recorder by the recording of the Notice, or Amended Notice, of

Imposition of Civil Penalties or the Notice, or Amended Notice, of Increase in Civil Penalties, whichever is applicable.

The lien shall remain in effect until released and shall run with the land.

Upon correction of the violation(s) and payment of all penalties and costs associated with the imposition, enforcement and collection of the penalties, the Planning Director shall record a release of lien pertaining to the paid penalties

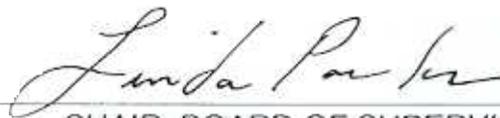
Section 5: This ordinance shall take effect and be in full force thirty (30) days after its passage.

PASSED AND ADOPTED this 5th day of DECEMBER, 2006, by the following vote:

AYES: Supervisors LONG, MIKELS, AND PARKS

NOES: NONE

ABSENT: BENNETT AND FLYNN



CHAIR, BOARD OF SUPERVISORS

ATTEST:

Philip J. Schmit, County Clerk,
County of Ventura, State of
California, and ex officio Clerk
of the Board of Supervisors thereof.

By Kathryn Purie
Deputy Clerk

