

ORDINANCE NO. 4987**ORDINANCE AMENDING SECTIONS 1.12.010, 1.12.060,
AND 1.12.070 OF THE SANTA CRUZ COUNTY CODE
RELATING TO VIOLATIONS OF THE COUNTY CODE**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Section 1.12.010 of the Santa Cruz County Code is hereby amended to read as follows:

1.12.010 Code violations deemed misdemeanors--Continuing violations.

It is unlawful, and constitutes a misdemeanor, for any person to violate, or to fail to comply with, any provision of the Santa Cruz County Code unless otherwise specified. Where the violation is denominated a misdemeanor, enforcement may be pursued by one or more of those alternatives set forth in Section 19.01.030 of the County Code. It shall be a separate offense for each and every day during any portion of which any violation of, or failure to comply with, any provision of this code is committed, continued or permitted. (Prior code § 1.08.010: Ord. 1532, 7/21/70)

SECTION II

Section 1.12.060 of the Santa Cruz County Code is hereby amended to read as follows:

1.12.060 Violations—Effect on permit issuance.

An applications for a permit pursuant to provisions of the Santa Cruz County Code may be denied or conditionally approved if one or more posted violations of the code or state law are found to exist on the same property and said application does not address the posted violations, with the exception of an application that the Planning Director determines is necessary to address immediate health and safety concerns. Acceptance of an application for a permit may be withheld until the applicant has paid the county's total cost of enforcement with regard to any violation(s) sought to be resolved by the application and with regard to any related violation; and any unpaid application fees and charges relating to the same property may be required to be paid prior to issuance of a permit. (Ord. 4266 § 1, 1993: Ord. 4257 § 1, 1993: prior code § 1.08.070: Ord. 2366, 11/30/76)

SECTION III

Section 1.12.070 of the Santa Cruz County Code is hereby amended to read as follows:

1.12.070 Code violations--Civil penalties--Illegal rents—Enforcement costs—Hearing officers—Administrative hearing procedures.

A. Civil penalties. Notwithstanding the legal authority to seek criminal remedies, including fines and/or imprisonment, the County may seek one or more of the civil remedies set forth in County Code section 19.01.030. Any person who violates any provision of the Santa Cruz County Code, including any failure to comply with any provision of the code, shall be liable in a civil proceeding for: (1) a civil penalty not to exceed one hundred dollars for each violation that would otherwise be an infraction, provided that a second violation of the same ordinance within twelve preceding months shall be subject to a civil penalty not to exceed two hundred dollars and any additional violation of the same ordinance within one year shall be subject to a civil penalty not to exceed five hundred dollars; or (2) a civil penalty not to exceed two thousand five hundred dollars for each violation that would otherwise be a misdemeanor. After any person has been given notice that any act or failure to act is a violation of the code, it shall be a separate offense for each and every day during any portion of which that person knowingly and intentionally commits or permits additional acts constituting a violation of that provision of this code. Any penalties recovered under this subsection in excess of the total county costs of enforcement shall be deposited in the county's general fund.

B. Illegal rents. In addition to the civil penalty provided by subsection A of this section, any person who constructs or converts, installs or maintains a structure for human habitation without a building or development permit in violation of any provision of this code which would otherwise be a misdemeanor shall be liable for a civil penalty in the amount of any rent received from any occupant or, in the alternative, in the amount of the reasonable rental value of the structure based on the Santa Cruz County Housing Authority's *Schedule of Payment Standards* for rentals from the date of its construction, conversion, installation, or maintenance. For the purposes of this subsection, a structure for human habitation shall include, but not be limited to, a recreational vehicle, trailer, mobile home, tent, modular or other enclosure used for human habitation. Any penalties recovered under this subsection shall be deposited in a fund designated by the Board of Supervisors for code compliance related functions.

C. Enforcement costs. A person violating any of the provisions of the Santa Cruz County Code which would otherwise be a misdemeanor shall be liable to pay the county's total costs of enforcement, including charges for reasonable attorney's fees.

D. Hearing Officers.

1. Duties. The Board of Supervisors shall provide independent contractor hearing officers to conduct hearings, to issue subpoenas, to receive evidence to administer oaths, to rule on questions of law and the admissibility of evidence, to prepare a record of the proceedings, to issue enforcement orders with regard to violations of the county code or of specified chapters of the county code, and to provide for the recovery of enforcement costs, any civil penalties including, but not limited to, penalties imposed as a result of illegal rents, and any other costs of abatement as a special assessment against the property on which the violation(s) occurred or as a personal obligation of the person violating, causing, permitting or continuing the violation(s).

2. Notice of Violation--Contents.

a. Prior to instituting any administrative proceedings for the recovery of civil penalties for continuing violations which pertain to building, plumbing, electrical or similar structural or zoning or environmental issues that do not create an immediate danger to health or safety, notice of the opportunity to correct or remedy the violation within ninety (90) calendar days without civil penalties shall be provided to the person responsible for the continuing violation by personal service or by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing and by posting the notice on the site of violation.

b. The notice of violation shall also state the county code provisions alleged to have been violated; the location of the property on which the alleged violation has occurred, including the parcel number used by the assessor on the current roll; the name and address, if known, of the person alleged to have committed or permitted the violation(s) and of the property owner and other person, if any, in possession of the property, and the name, address and telephone number of the department or agency issuing the notice to which protests, or objections, or other communications may be directed.

3. Notice of Administrative Hearing. Should a code enforcement matter be set for administrative hearing, written notice of the time, date and location of a hearing before the hearing officer shall be given by personal service or by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the person or persons alleged to have violated the county code, and to any other person known to own or possess the property, at least fifteen days prior to the date of the hearing.

4. Hearing Officer Disqualification. Hearing officers shall be licensed attorneys of the State Bar of California in good standing. A hearing officer shall disqualify himself or herself from serving as hearing officer in a particular matter where he/she has a conflict of interest within the meaning of the Political Reform Act (Government Code Sections 87100 et seq.), and shall otherwise comply with the disqualification provisions of Canon 3.E. of the Code of Judicial Ethics. The notice of hearing shall also identify the hearing officer designated to conduct the hearing and advise the recipient(s) of their right to submit within ten business

days of the date of the notice of hearing a written objection to the designated hearing officer. In the event of such a disqualification, a new hearing officer shall be randomly selected from the panel of alternate hearing officers established by the Board of Supervisors. Each party shall only have the right to disqualify one hearing officer for a particular matter.

5. Hearing Officer Procedures.

a. Requirements for Taking Testimony. In any proceeding before a hearing officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the hearing officer, his/her clerk, or other designee have the power to administer oaths and affirmations and to certify to official acts. Oaths of witnesses may be given individually or en masse. Witnesses shall be asked to raise their right hands and to swear or affirm that the testimony they shall give will be the truth, the whole truth, and nothing but the truth.

b. Continuances. The hearing officer may continue the hearing as determined appropriate by the hearing officer.

c. Administrative Interpretations. In conducting the hearing, the hearing officer shall consider the previously established interpretation of an ordinance provision by the department charged with its enforcement unless that interpretation is shown to be clearly erroneous or unauthorized.

d. Hearing Officer Decisions. At the conclusion of the hearing held on the alleged violation(s), the hearing officer shall have the authority, subject to the limitations set forth in this section, to render a decision, supported by written findings, which:

i. Determines whether the person given notice has committed, maintained, or permitted the alleged violation(s) of the county code;

ii. Orders the payment of the total verified amount of the county's enforcement costs and other abatement costs by any such person found to have committed or permitted the violations;

iii. Orders the payment of civil penalties, including any imposed as a result of illegal rents, to be paid by any such person found to have committed or permitted the violations;

iv. Orders action to be taken to correct any violations by any such person found to have committed or permitted the violations including, but not limited to, the termination of tenancies and the vacating of illegal structures;

v. Determines whether any enforcement costs, other abatement costs, and civil penalties are to be made a special assessment against the property on which the violation(s) occurred and collected on the secured tax roll, and/or are to be the personal obligation of the person committing or permitting the violation and collected on the unsecured tax roll.

E. In determining the amount of civil penalties to be assessed against any person violating a provision of the county code, which would otherwise be a misdemeanor, the hearing officer shall take into consideration the following:

1. The extent to which the person knowingly and wilfully violated the county code;
2. The magnitude of the violation;
3. The extent to which the person derived a financial benefit from the violation;
4. Any prior history of related violations by the same person on the subject property or on other parcels within the county;
5. The financial ability of the person to pay;
6. Any corrective action voluntarily undertaken by the person prior to the hearing to eliminate the violation and any other mitigating circumstances justifying a reduction of the amount of the penalties.

F. The authority of the hearing officer to impose civil penalties for a violation which would otherwise be a misdemeanor is limited to a maximum of two thousand five hundred dollars per violation, and a total of ten thousand dollars for related multiple violations on a single parcel of property by any one person. These maximum limitations shall be exclusive of any civil penalties imposed as a result of illegal rents.

G. The decision of the hearing officer shall be final when issued in writing, and shall be enforceable twenty-one days after service of the decision by mail, unless an appeal of the decision has been filed by the person in accordance with subsection H of this section. The decision of the hearing officer shall include a statement of the appeal rights of any party to the proceeding as set forth in subsection H of this section.

H. The provisions of Section 53069.4 of the Government Code shall be applicable with regard to proceedings to obtain judicial review of the decisions of the hearing officer. The decision of the hearing officer shall be subject to judicial review pursuant to the provisions of Section 53069.4 of the Government Code only if an appeal is filed with the Santa Cruz superior court clerk, together with the applicable appeal fee, within twenty days after service of the decision of the hearing officer by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing. Any person filing an appeal shall serve a copy of the notice of appeal in person or by first class mail on the hearing officer with a copy to the county planning director. Within fifteen days from request from the court, the hearing officer shall forward to the court the file of the hearing together with the notice of violation of this code, the notice of code violation hearing before a hearing officer, and the decision of the hearing officer. If an appeal is not timely filed in accordance with this subsection, all persons are barred from commencing or prosecuting any such action or proceeding or asserting any defense of invalidity or unreasonableness of such decision, proceedings, determinations or actions taken.

I. The hearing officer shall submit the decision to the Clerk of the Board of Supervisors and a copy to the planning director. At such time as a decision which imposes a special assessment is enforceable as provided in



subsection G of this section, the planning director shall cause to be recorded in the county recorder's office a notice of code enforcement assessment lien if the special assessment is then unpaid. Upon recordation of a notice of code enforcement assessment lien, the assessment lien shall attach to the property. Each such assessment lien shall be subordinate to all existing special assessment liens previously imposed upon such property and paramount to all other liens except those for state, county and municipal taxes with which it shall be upon parity. The lien shall continue until the amount of the lien and all interest and penalties due and payable thereon are paid. Recordation of a notice of code enforcement assessment lien shall have the same effect as recordation of an abstract of a money judgment. At such time as any decision of the hearing officer is enforceable which orders the payment of enforcement costs, and other abatement costs, and/or civil penalties, and such costs and civil penalties have not then been paid in full, the planning director shall file with the auditor-controller and tax collector a certified copy of the notice of code enforcement assessment lien for each obligation for payment which has been made a special assessment, and a notice of code enforcement personal obligation for each which is a personal obligation. The auditor-controller shall add the unpaid amount(s) of the special assessments to the next regular tax bill for taxes levied against said property for county purposes. For personal obligations, the auditor-controller shall add the unpaid amounts to the unsecured tax roll. Thereafter, said amount(s) added to the secured and unsecured tax rolls shall be collected at the same time and in the same manner as county taxes are collected, and shall be subject to the same interest charges and penalties and procedure for sale in case of delinquency as provided for property taxes of the county, and all laws applicable to the levy, collection and enforcement of county taxes shall be applicable. If any real property to which a code enforcement assessment lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of county taxes would become delinquent then the enforcement costs, other abatement costs, and civil penalties shall not result in a lien against the real property but shall be transferred to the unsecured roll for collection.

J. On payment of the tax collector of a special assessment, the tax collector shall cause to be recorded a release of lien with the county recorder, and from the sum collected pursuant to this section the auditor-controller shall distribute to the county recorder a release of lien fee established by Government Code Section 27631.3.

K. The county counsel upon receipt of a final decision of a hearing officer which orders the payment of civil penalties or payment of enforcement costs or other abatement costs, or upon obtaining authorization from the Board of Supervisors of the county, may (in addition to any other collection procedures provided by this section) prepare and file a civil action on behalf of the county in

any court of competent jurisdiction to recover the civil penalties and costs of enforcement provided by this section and for injunctive or any other appropriate relief.

L. In the event a civil action is initiated to obtain enforcement of the decision of the hearing officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the county's total costs of enforcement, including reasonable attorney's fees.

M. The remedies and civil penalties provided by this section shall be in addition to any other remedies and penalties provided by law. (Ord. 4708 § 1, 4/8/03; Ord. 4701 § 1, 1/14/03; Ord. 4695 § 4, 12/10/02; Ord. 4546 § 1, 1999; Ord. 4401 § 1, 1996; Ord. 4290 § 1, 1994; Ord. 4266 § 2, 1993; Ord. 4257 § 2, 1993; Ord. 4110 § 1 (part), 1991; Ord. 3991 § 1, 1989; Ord. 3951 § 1, 1988)

SECTION III

Except for the amendment contained in subsection 2.a. of subdivision D of Section 1.12.070 relating to the time provided to correct certain violations without incurring civil penalties, the provisions of this Ordinance are intended to be a declaration or clarification of existing law rather than a change in law.

SECTION IV

This ordinance shall take effect and be operative on the 31st day after the date of final passage.

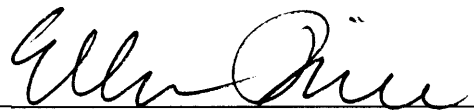
PASSED AND ADOPTED THIS 10th day of June, 2008, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

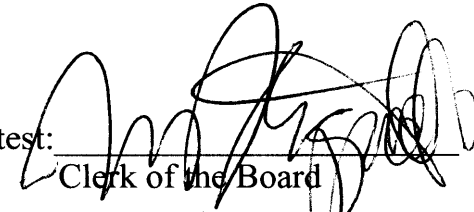
Stone, Campos, Beautz, Coonerty and Pirie
None

None

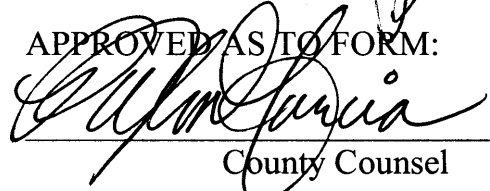
None


Chairperson of the Board of Supervisors

Attest:


Clerk of the Board

APPROVED AS TO FORM:


County Counsel