ORDINANCE NO. 5468

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING SECTION 1-7.1 OF THE SONOMA COUNTY CODE

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

SECTION I. Section 1-7.1 of the Sonoma County Code is amended to read:

Sec. 1-7.1. **Civil penalty for violation of certain building, zoning, public health, drainage, and storm water regulations.

(a) Charge -- Code Violations. In addition to any other fee or penalty imposed by this code or by law, any person who violates Sections 7-5, 7-13, 7-17, 11-2, 11-29, 11-30, 11-31, 24-33, 25-13, or 26-92-200, 26A-15 or 26C-338.1 of this code shall:

(1) If the violation arises from an unlawful commercial, rental or similar use or structure on the property, pay one of the following sums, as determined by the enforcing officer, to the County of Sonoma:

(i) The fair market rental value of the land or structure in violation for the period of time elapsed from the date of mailing of the notice of violation through to its abatement by whatever means; or

(ii) No less than twenty-five dollars ($25.00) per day and no more than one hundred dollars ($100) per day for the first violation; no more than two hundred dollars ($200) per day for a second violation of the same ordinance within one year; and no more than five hundred dollars ($500) per day for each additional violation of the same ordinance within one year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means; or

(iii) In the event that the use or structure in violation may be permitted with an appropriate permit, a minimum of three (3) times and up to a maximum of ten (10) times the amount of the standard fee for every required approval, review, and permit.
(2) If the violation arises from an unlawful owner-occupied residential use or structure on the property, pay one of the following sums, as determined by the enforcing officer, to the County of Sonoma:

(i) The fair market rental value of the land or structure in violation for the period of time elapsed from the date of mailing of the notice of violation through to its abatement by whatever means; or

(ii) No less than fifteen dollars ($15.00) per day and no more than one hundred dollars ($100) per day for the first violation; no more than two hundred dollars ($200) per day for a second violation of the same ordinance within one year; and no more than five hundred dollars ($500) per day for each additional violation of the same ordinance within one year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means; or

(iii) In the event that the use or structure in violation may be permitted with an appropriate permit, a minimum of three (3) times and up to a maximum of five (5) times the amount of the standard fee for every required approval, review, and permit.

(3) For any other violation, including but not limited to an unlawful noncommercial junkyard, an unlawful noncommercial truck terminal, an unlawful nonoperative vehicle storage yard, unlawful accessory structure or an unlawful excess number of animals, pay one of the following sums, as determined by the enforcing officer, to the county of Sonoma:

(i) No less than five dollars ($5.00) per day and no more than one hundred dollars per day, as determined by the enforcing officer, and no more than one hundred dollars ($100) per day for the first violation; no more than two hundred dollars ($200) per day for a second violation of the same ordinance within one year; and no more than five hundred dollars ($500) per day for each additional violation of the same ordinance within one year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means.

(ii) In the event that the use or structure in violation may be permitted with an appropriate permit, a minimum of three (3) times and up to a maximum of five (5) times the amount of the standard fee for every required approval, review, and permit.
(4) The enforcing officer shall have the sole and exclusive discretion to set the amount of civil penalties within the ranges set forth in this section. Except that, the enforcing officer, shall not impose a penalty greater than the minimum amount in a range of civil penalties set forth in this section, unless the enforcing officer's department has adopted a written policy setting forth how civil penalties within the ranges are determined.

(b) Charge-Code Violations For Sewer Operational Permits. Notwithstanding subsection (a) of this section, if the violation of Section 24-33 of this code is solely for nonpayment of the fee provided for in Section 24-33(b), then any person in such violation of that section shall pay to the county of Sonoma a sum as follows:

(1) An amount equal to twenty-five percent (25%) of the fee for such permit if such violation has existed for less than sixty (60) days; or

(2) An amount equal to fifty percent (50%) of the fee for such permit if such violation has existed for sixty (60) days or more but less than one hundred eighty (180) days; or

(3) An amount equal to the penalty which would be calculated under Section 1-7.1(a) if such violation has existed for one hundred eighty (180) days or more.

(c) Enforcing Officer. For the purposes of this section, "enforcing officer" means:

(1) With respect to violations of Sections 7-5, 7-13 or 7-17 of this code which primarily concern structures, fill or grading, the director of the permit and resource management department;

(2) With respect to violations of Sections 7-5, 7-13, 7-17 or 24-33 of this code which primarily concern private sewage disposal systems, the director of permit and resource management department; and

(3) With respect to violations of Section 26-92-200 of this code, the director of permit and resource management department.

(4) With respect to violations of Sections 11-2, 11-29, 11-30 or 11-31 of this code, the director of the permit and resources management department.

(d) Determination of Penalties. The determination of charges imposed under this section shall, in the first instance, be performed by the enforcing officer, or his or her designee. Such determination shall take into account the facts and circumstances of the violation including, but not limited to, whether or not the violation poses a threat to human health, safety, or to the environment; the seriousness or gravity of the violation; the length of time the violation has existed; the culpability of the person in violation or the willfulness of the violation; the sophistication of the persons creating or causing the
violation; the extent of the violation and its effect on adjoining properties; attempts, if any, to comply with the applicable ordinances; and any other information which might be relevant to the determination of charges to be imposed by this section. At the discretion of the enforcing officer, or his or her designee, or upon the appeal of the property owner, the determination may be referred to a hearing officer or hearing board of the county of Sonoma, duly appointed to hear such matters. The determination of the hearing officer or hearing board as to the amount of charges properly imposed under this section shall be final, subject only to judicial review. The enforcing officer shall establish written procedures for the appeal of cases under his or her jurisdiction.

(e) Exclusions.

(1) The charges imposed by this section shall not apply if the property owner establishes that, at the time he or she acquired the property, (i) a violation of this code existed on the property, (ii) the property owner did not have actual or constructive notice of the existence of that violation, and (iii) within thirty (30) days after the mailing of notice of the existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, as determined solely by the enforcing officer, to meet the requirements of this code. A property owner has constructive notice of the existence of a violation if the property owner has actual notice of circumstances sufficient to put a prudent person upon inquiry as to a particular fact and if by prosecuting such inquiry, the person might have learned that a violation existed on the property.

(2) The charges imposed by this section shall not apply if the property owner establishes that (i) within thirty (30) days after the date of mailing of notice of the existence of the violation, the property owner removed from the property the use or structure which constituted that violation, and (ii) the property owner had not previously been mailed a notice of a violation of the same code section, regardless of the parcel on which such violation occurred. (Ord. No. 4906 § 2, 1995; Ord. No. 4844, 1994; Ord. No. 4781 § 1, 1994; Ord. No. 4618 § 1, 1993.)

SECTION III. The Board of Supervisors expressly finds that the changes or modifications made herein to Section 1-7.1 of the Sonoma County Code, including giving the Department of Permit and Resources Management discretion to impose higher penalties, are reasonably necessary in order to achieve compliance with the Sonoma County Code and to fairly impose different penalties in different circumstances. The Board of Supervisors further finds in connection therewith as follows:

1. State law authorizes counties to impose reasonable penalties, under their police powers, as a means of securing compliance with enacted ordinances;
2. Due to a wide variety of types of violations of the same ordinance and the differing significance of violations, county staff members need discretion in setting penalties in order to ensure that the penalty is proportional to the violation;

3. Civil penalties are needed to serve a deterrent purpose; the current penalties are too low and are often seen as “cost of doing business” by some violators;

4. The Department of Permit and Resources Management, in collaboration with relevant Regional Water Quality Control Boards, has determined that substantial civil penalties are needed in order to secure compliance with Sonoma County’s drainage and storm water regulations;

5. Code violators vary greatly in their sophistication and net worth, necessitating a variance in the amount of penalties imposed for violations;

6. There is a need for stronger civil penalties for individuals who repeatedly violate the Sonoma County Code or for those individuals who refuse to bring their properties into compliance with the Sonoma County Code.

SECTION IV. The Board of Supervisors finds and determines that this ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of the State CEQA Guidelines as it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. This finding and determination is based on the environmental determination of the Permit and Resource Management Department for this ordinance. The Director of the Permit and Resource Management Department is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

SECTION V. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION VI. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in The Press Democrat, a
newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma introduced on the _24_ day of _February_, 2004, and finally passed and adopted this _9_ day of _March_, 2004, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

BROWN  aye  KERNS  aye  SMITH  absent  KELLEY  aye  REILLY  aye

AYES  4  NOES  ___  ABSTAIN  ___  ABSENT  1

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

[Signature]
Chair, Board of Supervisors
County of Sonoma

ATTEST:

[Signature]
EEVE T. LEWIS, County Clerk and ex-officio Clerk of the Board of Supervisors

March 9, 2004 (1:50pm)
TMW # 61779.1