

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 35-1, THE SANTA BARBARA COUNTY LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE BY AMENDING ARTICLE 35.5, OIL AND GAS, WIND ENERGY AND COGENERATION FACILITIES, AND ARTICLE 35.8, PLANNING PERMIT PROCEDURES, TO IMPLEMENT NEW PROCEDURES REGARDING DETERMINATIONS OF EXEMPTION FROM MEASURE P2014: INITIATIVE TO BAN “HIGH-INTENSITY PETROLEUM OPERATIONS.”

Case No. 14ORD-00000-00008

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

SECTION 1.

ARTICLE 35.5, Oil and Gas, Wind Energy and Cogeneration Facilities, of Section 35-1, the County Land Use and Development Code, of Chapter 35, Zoning, of the County Code, is amended to add a new Section 35.50.040 titled “Determination of Exemption” to read as follows:

35.50.040 - Determination of Exemption

A. Purpose and Intent. The purpose and intent of this Section is to provide procedures for determining whether a land use that is normally not allowed in compliance with Section 35.42.175 (High-Intensity Petroleum Operations) or Section 35.50.030 (Compliance with the Healthy Air and Water Initiative to Ban High Intensity Petroleum Operations) is exempt from the prohibitions of those Sections as allowed by Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” (“the Initiative”). Section 5 (Exemptions for Certain Projects) of the Initiative provides that:

1. The provisions of the Initiative shall not be applicable to the extent, but only to the extent, that they would violate the constitution or laws of the United States or the State of California;
2. In the event a property owner contends that application of the Initiative effects an unconstitutional taking of property, the property owner may request, and the Board may grant, an exception to the application of any provision of the Initiative if the Board finds, based on substantial evidence, that both (1) the application of any aspect of the Initiative would constitute an unconstitutional taking of property, and (2) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking; and
3. The provisions of the Initiative shall not be applicable to any person or entity that has obtained, as of the effective date of the Initiative, a vested right, pursuant to State law, to conduct a High Intensity Petroleum Operation.

B. Applicability.

1. This Section 35.50.040 (Determination of Exemption) applies to any person seeking an exemption determination associated with Subsections A.2 or A.3, above.
2. Review authority. The review authority for a Determination of Exemption is identified in Table 5-1 (Determination of Exemption Review Authorities) below.

Table 5-1 Determination of Exemption Review Authorities

<u>Type of Exemption</u>	<u>Role of Review Authority</u>		
	<u>Director</u>	<u>Planning Commission</u>	<u>Board of Supervisors</u>
<u>Determination of Exemption associated with Subsection 35.50.040.A.2</u>			<u>Decision</u>
<u>Determination of Exemption associated with Subsection 35.50.040.A.3</u>	<u>Decision</u>	<u>Appeal</u>	<u>Appeal</u>

a. Applications. A separate application for a Determination of Exemption shall be filed for each type of exemption requested.

C. Contents of Application and Review for Completeness. Any application for a Determination of Exemption allowed in compliance with Subsection B. (Applicability) shall be submitted by the applicant seeking the exemption in compliance with Chapter 35.80 (Permit Application Filing and Processing).

1. The applicant for any exemption shall submit as part of the application any and all evidentiary support reasonably available sufficient to establish the basis for the claim of exemption.

a. The filing of an application for a Determination of Exemption associated with Subsection 35.50.040.A.2 shall be accompanied by an application for the development project for which the exemption determination is requested.

1) The Director may waive the requirement to submit the application for the development project for good cause.

D. Processing.

1. **Applications under the jurisdiction of the Board.** The following applies to the processing of applications for Determinations of Exemption associated with Section 35.50.040.A.2.

a. **Determination of Exemptions processed in conjunction with a development project.** When an application for a Determination of Exemption is filed concurrently with an application for a development project in compliance with Subsection C.1.a, above, then the application for the Determination of Exemption shall be processed in conjunction with the application for the development project and shall be subject to the same processing requirements and timelines of the development project except as follows:

1) Notwithstanding the provisions of Table 8-1 (Review Authority), the Board shall approve, conditionally approve, or deny the application for the Determination of Exemption and the application for the development project, and the review authority identified in 8-1 as having decision authority on the application for the development project shall instead make a recommendation to the Board on the on the application.

b. **Determination of Exemptions not processed in conjunction with a development project.** The following applies to applications for Determinations of Exemption where the Director has waived the requirement to submit the application for the development project for good cause in compliance with Subsection C.1.a, above.

1) Notice of the application for the Determination of Exemption shall be given in compliance with Section 35.106.020 (Notice of Public Hearing and Review Authority Action.)

2) The Board shall hold at least one noticed public hearing on the application and approve, conditionally approve or deny the request.

3) The hearing shall be held within 180 days of the determination that the application is complete. The application shall be processed in compliance with Chapter 35.80 (Permit Application Filing and Processing).

a) For good cause the Director may delay the holding of the hearing for an

additional 180 days.

- 4) Notice of the time and place of the hearing shall be given and the hearing shall be conducted in compliance with Chapter 35.106 (Noticing and Public Hearings).
- 5) The Board may continue the hearing to allow or require the applicant or Department to submit additional information or legal analysis.
- 6) The action of the Board shall be final.

2. Applications under the jurisdiction of the Director. The following applies to the processing of applications for Determinations of Exemption associated with Section 35.50.040.A.3.

- a. The Director shall approve, conditionally approve or deny the application for the Determination of Exemption. A public hearing is not required.
- b. The Director shall act on the application within 60 days of the determination that the application is complete. However, the Director may extend this period of time to allow or require the applicant or Department to submit additional information or legal analysis or other good cause.
- c. The action of the Director is final subject to appeal in compliance with Chapter 35.102 (Appeals).

E. Findings Required for Approval.

1. A Determination of Exemption application shall be approved or conditionally approved only if the review authority first makes one of the following findings, as applicable.
 - a. **Applications for Determinations of Exemption associated with Section 35.50.040.A.2.** There is sufficient evidence in the record to determine that approving or conditionally approving the application is required in order to avoid an unconstitutional taking of property and that the application, as approved, will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking.
 - b. **Applications for Determinations of Exemption associated with Section 35.50.040.A.3.** There is sufficient evidence in the record to establish that the applicant obtained prior to [effective date of the Initiative] a vested right to conduct a High Intensity Petroleum Operation.

F. Enforcement. The Director shall not take any action under Chapter 35.108 (Enforcement and Penalties) to enforce the Initiative against any owner or operator of an existing facility if an application for an Determination of Exemption has been filed in compliance with this Section 35.50.040 (Determination of Exemption) and the application has expired in compliance with Section 35.80.050.B.4 (Expiration of Application), or final action to deny the application has not occurred.

SECTION 2.

ARTICLE 35.8, Planning Permit Procedures, of Section 35-1, the County Land Use and Development Code, of Chapter 35, Zoning, of the County Code is amended to amend Subsection B.3 of Section 35.80.020, Authority for Land Use and Zoning Decisions, of Chapter 35.80, Permit Application Filing and Processing, to read as follows:

3. This Section shall not apply to applications for:
 - a. Coastal Development Permits submitted in compliance with [Section 35.82.050 \(Coastal Development Permits\)](#) that do not require a public hearing in compliance with [Section 35.82.050 \(Coastal Development Permits\)](#).
 - b. Design Review submitted in compliance with [Section 35.82.070 \(Design Review\)](#).
 - c. Emergency Permits submitted in compliance with [Section 35.82.090 \(Emergency Permits\)](#).

- d. Land Use Permits submitted in compliance with [Section 35.82.110 \(Land Use Permits\)](#).
- e. Sign Certificates of Compliance required in compliance with [Chapter 35.38 \(Sign Standards\)](#).
- f. Zoning Clearances submitted in compliance with [Section 35.82.210 \(Zoning Clearance\)](#).
- g. Determinations of Exemption submitted in compliance with Section 35.50.040 (Determination of Exemption). See Section 35.50.040 for specific requirements.

SECTION 3:

All existing indices, section references, and figure and table numbers contained in Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code, are hereby revised and renumbered as appropriate to reflect the revisions enumerated above.

SECTION 4:

Except as amended by this Ordinance, Article 35.5 and Article 35.8 of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 5.

This ordinance shall take effect and be in force upon the date that the Initiative becomes effective, and before the expiration of 15 days after its passage by the Board of Supervisors a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ____ day of _____, 2014, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

STEVE LAVAGNINO, CHAIR
BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

ATTEST:

MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI

COUNTY COUNSEL

By _____
Deputy County Counsel

DRAFT