

**ATTACHMENT G: CASE NO. 14ORD-00000-00008  
COUNTY LUDC ORDINANCE AMENDMENT**

**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 an administrative process 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 Fracking) is exempt from the prohibitions of those Sections as allowed by Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” (“the Initiative”). This Section only codifies an administrative process for claims of exemption that neither enlarges nor narrows the exemptions contained in Section 5 (Exemptions for Certain Projects) of the Initiative which 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. Persons subject to the Initiative may, but are not required to, file applications for exemption determinations associated with Subsections A.2 and A.3, above. This Section 35.50.040 (Determination of Exemption) applies to any person seeking such exemption determinations.
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.
    - (2) Where the Director has waived the requirement for a development application, if the Board determines such an application is necessary to determine if the exemption applies, the Board may require such application to be filed and processed before the County will take a final action on the application for the exemption.

**D. Processing.**

1. **Applications under the jurisdiction of the Board.** The following applies to the processing

of applications for Determinations of Exemption associated with Subsection 35.50.040.A.2.

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

**b. Determination of Exemption 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.1, 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 or deny the request.

(3) The hearing shall be held within 180 days after the application is determined to be 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 Subsection 35.50.040.A.3.

- a. The Director shall 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 after the application is determined to be 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).
- d. Notice of the action of the Director shall be given as follows:
  - (1) **Newspaper publication.** Notice of the action of the Director shall be published in a least one newspaper of general circulation.
  - (2) **Mailed notice.** Notice of the action of the Director shall be to any person who has filed a written request for notice and has supplied the Department with self-addressed stamped envelopes.
  - (3) The Department's website shall reflect the action of the Director.

**E. Findings Required for Approval.** A Determination of Exemption application shall be approved only if the review authority first makes one of the following findings, as applicable.

- 1. 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.
- 2. 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 a Determination of Exemption has been filed in compliance with this Section 35.50.040 (Determination of Exemption) and the application has not expired in compliance with Subsection 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. The Board further directs and authorizes the Planning and Development Department to specify the effective date of the Initiative where this Ordinance makes reference to “[effective date of the Initiative]” in the County Land Use and Development Code at the time this Code is updated to reflect the adoption of the Ordinance.

### **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 30 days after adoption and shall only become operative and be in force upon the date that the Initiative becomes effective pursuant to State law, 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 7<sup>th</sup> day of October, 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