

ORDINANCE NO.: _____

**AN ORDINANCE AMENDING CHAPTER 17.06 OF THE ALAMEDA COUNTY
GENERAL ORDINANCE CODE TO PROHIBIT HIGH-INTENSITY
OIL AND GAS OPERATIONS**

The Board of Supervisors of the County of Alameda, State of California, does ordain as follows:

SECTION I

The Board of Supervisors makes the following findings in support of this Ordinance:

1. One of the basic objectives of the County's Zoning regulations is to promote public health and safety; and
2. The land use activity of drilling for and extraction of oil, gas and hydrocarbons has been conducted in Alameda County for several decades, subject to issuance of discretionary conditional use permits; and
3. Recent advances in technologies used for oil and gas exploration have made it feasible to extract oil and gas that was previously considered trapped within shale formations; and
4. The recent development and increasing prevalence of high-intensity oil and gas operations, which may use well stimulation treatments such as hydraulic fracturing, commonly called "fracking," and acid fracturing have raised concerns regarding public health, safety and welfare, including pollution of air, soil, surface water, and groundwater, the depletion of water supplies, noise pollution, traffic, and seismic hazards; and
5. Great interest has been shown by the oil and gas industry in extracting oil and gas from the Monterey Shale Formation, which has been estimated to contain 600 million barrels of recoverable oil; and
6. Portions of the Monterey Shale Formation, and other rocks potentially containing oil and gas resources, may underlie portions of the County; and
7. Although no such high-intensity oil and gas operations currently exist within the County, technologically feasible and economically viable approaches may be discovered by the oil and gas industry to tap potential accumulations of oil and gas resources in the Monterey Shale Formation or other rocks containing oil and gas resources, and interest could turn from the developed resource areas in southern California to other parts of the State, including this County; and

8. The practice of storing wastewater or produced water from oil and gas operations, which may contain hazardous concentrations of chemicals, at or near the surface in pits or sumps may result in environmental damage if the chemicals seep into surrounding soils and water sources; and
9. Article XI, Section 7 of the California Constitution permits a county to make and enforce all local police, sanitary and other ordinances and regulations not in conflict with general laws; and
10. The County has the authority to regulate the intensity of land uses pursuant to California Government Code Section 65850; and
11. The State of California adopted SB4 in 2013 and regulations in 2015 (Title 14, Ch. 4, Sections 1751 et seq.) concerning well stimulation activities such as fracking and has adopted regulations regarding the disposal of wastewater, but the State has not limited a local agency's jurisdiction to govern appropriate uses of land within its boundaries; and
12. This Ordinance Amendment does not contradict or duplicate state law because, while the state law imposes requirements for such operations, it does not require that such operations be permitted in any and all parts of the State; and
13. This Ordinance Amendment does not tread into a field fully occupied by state law, because the state law does not impose restrictions or requirements with respect to local land use; and
14. This Ordinance Amendment is not anticipated to effectuate a taking of private property because no high-intensity oil and gas operations currently exist in the County and any affected land will almost certainly retain some economically viable use consistent with the agricultural character of the district such as viticulture, farming, ranching, animal boarding, production of renewable energy, open space and conservation easements, and some residential uses; and
15. Currently, drilling for and removal of oil, gas or other hydrocarbon substances is only permitted in the Agricultural district of the County if a conditional use permit is approved pursuant to Ordinance Code section 17.06.040(I); and
16. High-intensity oil and gas operations constitute a land use separate and distinct from those uses permitted by Ordinance Code section 17.06.040(I) because drilling for and removal of oil, gas or other hydrocarbon substances generally involves drilling wells through which oil or gas flows naturally under its own pressure or through which oil is pumped up to the surface, whereas high-intensity oil and gas operations, typically include high-pressure injections of solvents, acids, and other chemicals, and/or steam to fracture, heat, or dissolve into the land in order to free oil and/or natural gas from underground formations and the uses of drilling for and removing oil and gas are distinct from storing and disposing of wastewater; and

17. In adopting the South Livermore Plan in 1993, the East County Area Plan (ECAP) in 1994, and Measure D in 2000, the Board of Supervisors and the voters have been reducing industrial uses in the East County in favor of agricultural uses, open space uses, and uses that would enhance the development of the region as a wine region; and

18. High-intensity oil and gas operations, including hydraulic fracturing, endanger the County's public health and safety and the environment; and

19. This Ordinance Amendment is consistent with ECAP policy 167 in that it continues to "protect future onsite and nearby uses from potential impacts resulting from petroleum exploration or extraction," and

20. The potential harm associated with the prohibited activities could affect not only the human communities of the County but also the agricultural and open space uses, including potential negative effects on the water and food sources for horses, cattle and wildlife; and

21. This Ordinance Amendment would restrict all current and future land uses within the unincorporated area of Alameda County from expanding to include high-intensity oil and gas operations, thus helping to reduce the likelihood of the risks described above; and

22. With this action, the Alameda County Board of Supervisors intends to prohibit high-intensity oil and gas operations such as fracking in all districts; and

23. This action is exempt from the requirements of CEQA, based on the following:

(1) This Ordinance Amendment is not a project within the meaning of Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately; and

(2) This Ordinance Amendment is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15307, Class 7, "Actions by Regulatory Agencies for Protection of Natural Resources" as an regulatory action taken by the County pursuant to its police power to assure maintenance and protection of natural resources; and

(3) This Ordinance Amendment is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15308, Class 8, "Actions by Regulatory Agencies for Protection of the Environment" as an regulatory action taken by the County pursuant to its police power to assure maintenance and protection of the environment; and

(4) This Ordinance Amendment is not subject to CEQA under the general rule stated in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1), (2) and (3), it

can be seen with certainty that there is no possibility that this Ordinance Amendment will have a significant effect on the environment.

SECTION II

Sections 17.06.100 through Section 17.06.140 are hereby added to the Alameda County General Ordinance Code and read as follows:

17.06.100 High-Intensity Oil and Gas Operations – Definition

1. For the purposes of this chapter, high-intensity oil and gas operations means any of the following uses:
 - A. Well stimulation treatment – any treatment of a well designed to enhance oil or gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments, as defined in Title 14 California Code of Regulations Section 1761.
 - B. Enhanced recovery wells - wells that are injected with brine, water, steam, polymers, carbon dioxide, or other gasses into oil-bearing formations to recover residual oil and in some limited applications natural gas. The injected fluid thins (decreases the viscosity) or displaces small amounts of extractable oil and gas, which is then available for recovery. Examples include waterflood injection that uses imported water, shallow well water or surface water and/or injects chemicals designed for well production increase (other than those found naturally in produced water or which are necessary for routine well maintenance or clarifier use), steamflood injection, and cyclic steam injection.
 - C. Hydraulic fracturing or “fracking” – a well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid into an underground geologic formation in order to fracture the formation, thereby causing or enhancing the production of oil or gas from a well.
 - D. Acid fracturing – a well stimulation treatment that, in whole or in part, includes pressurized injection of acid into an underground geologic formation in order to fracture the formation, thereby causing or enhancing the production of oil or gas from a well.
 - E. Acid matrix stimulation treatment – an acid treatment conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation.
 - F. Acid well stimulation treatment - a well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation. The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments.

- G. Disposal or storage of the substances used in or the waste or byproducts of the uses listed above, including but not limited to hydraulic fracturing fluid, acid well stimulation fluid, well stimulation treatment fluid, flowback fluid, wastewater or produced water, other than storage associated with transportation through the County for disposal or storage outside of the County.
 - H. Disposal or storage in pits or sumps of any wastewater or produced water that is a byproduct of the uses listed in 17.06.040(I).
2. High-Intensity Oil and Gas Operations do not include produced water injection, storage tanks for produced water, and routine well cleaning and maintenance activities. Waterflood injection that does not use imported water, shallow well water or surface water and/or does not inject chemicals designed for well production increase (other than those found naturally in produced water or which are necessary for routine well maintenance or clarifier use) is excluded and does not constitute high-intensity oil and gas operations, as long the injection complies with all applicable state law and regulations.

17.06.110 High-Intensity Oil and Gas Operations – Prohibited Use

High-intensity oil and gas operations are prohibited in the unincorporated areas of the County. The development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of high-intensity oil and gas operations is prohibited in the unincorporated areas of the County.

17.06.120 High-Intensity Oil and Gas Operations – Amortization Period

- A. Within one year of the effective date of this section, the owners and operators of any existing high-intensity oil and gas operations shall bring land uses into conformity with this ordinance.
- B. The one-year amortization period permitted by Subsection A may be extended on a case-by-case basis if the Planning Commission determines that a high-intensity oil and gas operations owner or operator has shown that one year is not a reasonable amortization period pursuant to state law and Section 17.06.140. Any extension may be only for the minimum length of time necessary to provide a reasonable amortization period.

17.06.130 High-Intensity Oil and Gas Operations – Consistent with State and Federal Law

The provisions of sections 17.06.100 through 17.06.120 shall not be applicable to the extent, but only to the extent, they would violate the constitution or laws of the United States or of the State of California.

In the event a property owner contends that application of these provisions effects an unconstitutional taking of property, the property owner may request, and the Planning

Commission may grant, an exception to application of these provisions in accordance with Section 17.06.140.

17.06.140 High-Intensity Oil and Gas Operations – Nonconforming uses

- A. A person claiming a vested right to uses prohibited by Sections 17.06.100 through 17.06.120 must apply to the County for a determination that the vested right exists. Notice of the hearing shall be made in accordance with the procedures provided by section 17.54.830. The determination shall be made by the Planning Commission, following a public hearing. Upon a determination that the vested right exists, the use may continue subject to the sections of this title concerning nonconforming uses (17.52.610 through 17.52.730). The determination shall be appealable to the Board of Supervisors pursuant to sections 17.54.670-17.54.710.
- B. 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.
- C. A determination of exemption application shall be approved or conditionally approved only if the review authority first makes the following findings:
 - 1. The applicant obtained prior to the effective date of this section, a vested right to conduct high-intensity oil and gas operations;
 - 2. Approving or conditionally approving the application is required because the applicant has shown that a one year amortization period is not a reasonable amortization period pursuant to state law; and
 - 3. The extension is no longer than the minimum length of time necessary to provide a reasonable amortization period.
- D. No enforcement action shall be taken 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 and the application has not expired, or final action to deny the application has not occurred.

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____, 2016, by the following called vote:

AYES:
NOES:
EXCUSED:

_____, President of the Board of Supervisors
of the County of Alameda,
State of California

_____, Clerk of the Board of Supervisors
of the County of Alameda,
State of California

Approved as to Form:

Donna R. Ziegler, County Counsel

By: _____