

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of _____

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT,
STATE OF CALIFORNIA ADDING DIVISION 10 TO TITLE V OF THE HUMBOLDT
COUNTY CODE RELATING TO THE PROHIBITION OF THE STORAGE AND
HANDLING OF COAL AND PETROLEUM COKE ON COUNTY-OWNED
PROPERTY**

The Board of Supervisors of the County of Humboldt ordains as follows:

WHEREAS the County of Humboldt finds and declares:

- A. There is substantial evidence that storing or handling coal on and over County-owned property poses a danger to the health and safety of people living, working, visiting, and recreating on that and adjacent properties;
- B. Coal dust consists of fine particles that include PM2.5, for which there is no safe level of exposure, and which has been associated by the State of California and the World Health Organization with cancer and birth defects;
- C. These fine particles include crystalline silica (quartz), lead, mercury, arsenic, cadmium, and nickel;
- D. Burning of fossil fuels emits mercury, a powerful neurotoxin, into the upper atmosphere where it can travel long distances before being deposited into watersheds as well as inland and coastal waterways where it accumulates in fish threatening human health and Humboldt County's recreational, Tribal, and subsistence fisheries.
- E. Coal is subject to spontaneous combustion and requires specialized firefighting techniques;
- F. Storing and handling coal on County owned lands would be inconsistent with the County's vision for the community as set forth in the County of Humboldt's 2017 General Plan Update, including but not limited to these goals and principles:
 - Preserve the long term economically viable and environmentally sustainable, utilization and enjoyment of natural resources.

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- Maintain and enhance natural resources, recreational opportunities, quality education, vibrant town centers, access to employment, housing, retail, health care, childcare, safety, multimodal transportation, advanced telecommunications, and cultural and natural amenities.
- Maintain or enhance the quality of the county's water resources and the fish and wildlife habitat utilizing those resources.
- Encourage a safe, efficient, and enjoyable county transportation and trails system for the transportation and recreation needs of bicyclists, equestrians, hikers, and joggers.
- Provide park and recreation opportunities in the county.

WHEREAS Division 10 of Title V of the Humboldt County Code is hereby adopted as shown on Attachment 1 hereto.

NOW, THEREFORE, BE IT RESOLVED that the Chair be authorized on behalf of the Humboldt County Board of Supervisors to approve this addition of Division 10 to Title V of the Humboldt County Code.

BE IT FURTHER RESOLVED If any provision, subdivision, sentence, clause or phrase of this division as now constituted or later amended, or its application to any person or circumstance is held invalid, unconstitutional or otherwise unenforceable, that decision must not affect other provisions that can be given effect without the invalid provision or application. The Humboldt County Board of Supervisors declares that it would have adopted this division and each provision, subdivision, sentence, clause, or phrase hereof independent of the fact that any provision, subdivision, sentence, clause, or phrase may later be declared invalid or unenforceable.

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BE IT FURTHER RESOLVED The Board of Supervisors finds, pursuant to the California Environment Quality Act (CEQA), Guidelines section 15378, that this ordinance is not a Project as defined by CEQA. Furthermore, the ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) as it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

BE IT FURTHER RESOLVED This ordinance shall take effect and be in force thirty (30) days from the date of its passage. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

Dated: February __, 2022

Virginia Bass, Chair
County of Humboldt Board of Supervisors

Adopted on motion by Supervisor_____, seconded by Supervisor_____, and the following vote:

AYES: Supervisors --
NAYS: Supervisors --
ABSENT: Supervisors --
ABSTAIN: Supervisors --

STATE OF CALIFORNIA)
County of Humboldt)

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be an original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California.

ATTACHMENT 1

SECTION 1. Division 10 is hereby added to Title V of the Humboldt County Code to read as follows:

§ 5101-1 INTENT.

- A. This division is intended to protect and promote the health, safety, and welfare of the County's citizens, visitors, and workers by reducing the release of pollutants into the environment as a result of coal and petroleum coke storage and handling. This division is also intended to reduce the public health, safety, or welfare impacts (including, without limitation, adverse impacts to property values, aesthetics, and economic interests) caused by the storage and handling of coal and petroleum coke.
- B. This division bans the establishment and/or expansion of storage and handling of coal and/or petroleum coke on County-owned property.

§ 5101-2 DEFINITIONS.

As used in this article, the following terms have the following meanings:

Coal means a solid, brittle, carbonaceous rock classified as anthracite, bituminous, subbituminous, or lignite by the American Society for testing and Materials ("ASTM") Designation D388-77.

Petroleum Coke means a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations, including such residues produced by petroleum upgraders in addition to petroleum refining.

Property Owned by the County of Humboldt means property in which the County of Humboldt holds a proprietary interest to include fee, trust, or leasehold interests in land non-state or federally owned. To the extent the County possesses a leasehold interest in lands affected by this division, this article shall apply solely to County agents, invitees, and licensees.

Store or Handle, or Storing or Handling, or Storage or Handling means to allow or maintain any pile, including without limitation covered and uncovered piles, piles located above ground, underground, or within containers, or to load, unload, stockpile, or otherwise handle an/or manage, temporarily or permanently, coal and/or petroleum coke.

Small Amounts of Coal or Petroleum Coke means 25 pounds or less stored or handled in a 24-hour period.

§ 5101-3 PROHIBITION ON STORAGE AND/OR HANDLING OF COAL OR PETROLEUM COKE.

The storage and handling of coal and petroleum coke on any property owned by the County of Humboldt is prohibited.

§ 5101-4 EXEMPTIONS.

The following non-commercial uses are exempt from the provisions of subdivision 5101-3: residential, educational, scientific, recreational, religious, craft or cultural uses in which persons store or handle small amounts of coal or petroleum coke.

§ 5101-5 VIOLATIONS; DECLARATION OF A NUISANCE; ABATEMENT.

Any use that fails to comply with or violates any provision of this article is hereby declared to be an unlawful nuisance. Any use declared to be a nuisance pursuant to this section is subject to the abatement procedures and penalties including but not limited to those established in Division 5 of Title III of this Code.

§ 5101-6 EXCEPTIONS.

- A. The provisions of this division are not applicable to the extent, but only to the extent, that they would violate the constitution or laws of the United States or of the State of California.
- B. Any person claiming to be adversely affected by an unlawful or unconstitutional application of this division may apply to the County Administrative Officer for an exception, setting forth the basis for the application and requesting an exception. The County Administrative Officer or her/his designee must respond in writing within twenty-one (21) days, granting or denying the exception. Such determination of exception shall be published to the County of Humboldt website.
- C. Within ten (10) calendar days after publication of the determination of exception, any determination by the County Administrative Officer that an exception will be granted or denied may be appealed by any person aggrieved by such action to the Board of Supervisors. If no appeal is filed, the County Administrative Officer's decision is final.
- D. The Clerk of the Board will set the appeal for hearing before the Board of Supervisors at a regular or special meeting within sixty (60) calendar days and give notice to the applicant, the appellant, and by publication pursuant to Government Code § 6061 not less than 10 days prior to the hearing. The hearing will be conducted *de novo*. The Board may continue the hearing from time to time. The Board's findings and determination on the appeal will be final and conclusive.

§ 5101-7 CONFLICTING PROVISIONS.

Where a conflict exists between the requirements in this division and applicable requirements contained in other provisions of this Code, the applicable requirements of this division prevail.