

EXHIBIT B

ORDINANCE NO. _____

ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ADDING SECTION 6.35 TO CHAPTER 6 OF THE MENDOCINO COUNTY CODE TITLED BUSINESS LICENSES AND REGULATIONS

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Sec. 6.35.010 Title

This Chapter shall be known as and may be referred to in all proceedings as the "Mendocino County Right to Industry Ordinance".

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Sec. 6.35.020 Purpose

The purpose of this ordinance is to enhance the prospects of growth and stability for Mendocino County's businesses that are located within the County's established industrial zones: I-1 (Limited Industrial), I-2 (General Industrial), I (Coast Industrial), and P-1 (Pinoleville Industrial). The County recognizes that industrial interests operating within the County may be endangered by residents or other businesses located nearby and who seek to abate what they deem a nuisance arising from operations by said industrial interests.

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This ordinance seeks to reduce nuisance complaints by disclosing to existing and potential property owners who may be impacted by notifying them if their parcel falls within 300 feet of the border of an established industrial zone, as affected by this ordinance. Furthermore, this ordinance seeks to set parameters around the scenarios in which an industrial operation may ultimately be declared a nuisance and ordered to change operations, after an initial investigation, declaration of a potential violation, and review of the evidence by a County Enforcement Officer or a Hearing Officer.

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Sec. 6.35.030 Policy

Pursuant to the Planning Principles of the Mendocino County General Plan, it is the declared policy of this County to encourage sustainable economic growth. This objective directly correlates with the success of Mendocino County's industrial operations located within its industrially zoned districts. Where non-industrial land uses extend into industrial areas or exist side by side, industrial operations may become the subject of nuisance complaints. As a result, industrial operations could be forced to cease or curtail operation, and others could be discouraged from making investments and improvements.

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It is the purpose and intent of this ordinance to reduce the loss to the County of its employment base by limiting the circumstances under which industrial operations may be considered a nuisance. This section is not to be construed as in any way modifying or abridging State law as set out in the California Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or Government Code, relative to nuisances, but rather is only to be utilized in the interpretation and enforcement of the provisions of this code and County regulations.

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No existing or future industrial business or any of its appurtenances, consistent with the industrial operation provisions of the Mendocino County Zoning Code, conducted or maintained for commercial purposes, and in a manner consistent with applicable land use and environmental laws and regulations, shall become or be a nuisance, private or public, for adjacent land uses in or about the locality thereof after the same has been in operation for more than three (3) years, when such action was not a nuisance at the time it began; provided that the provisions of this subsection shall not apply whenever a nuisance results from a negligent or improper operation of any such industrial operation or its appurtenances, and said industrial business predates the complaining party's use or occupation of their land.

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Sec. 6.35.040 Definitions

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Unless the context otherwise requires, the following current definitions and provisions of the Title 20 Zoning Ordinance of the Mendocino County Code, or as amended in the future, shall govern the construction of this Ordinance for more effective interpretation and enforcement.

INDUSTRIAL LAND. Shall mean those land areas of the County specifically classified and zoned as Limited Industrial (I-1), Industrial and also known as "Coastal Industrial" (I), General Industrial (I-2), and Pinoleville Industrial (P-1), within which industrial and business activities are to be encouraged and protected. This zoning may include future Mendocino County General Plan and Zoning Code amendments to accommodate new types of industrial zoning, such as Light Industrial.

INDUSTRIAL OPERATION. Shall mean and include those Industrial Use Types described within Division I of the Mendocino County Zoning Code, Chapter 20.028 "Industrial Use Types," Coastal Industrial Use Types described within Division II of the Mendocino County Zoning Code, Chapter 20.328 "Coastal Industrial Use Types", whose definitions shall incorporate any future Mendocino County General Plan and Zoning Code amendments. and which includes the following:

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Mendocino County Zoning Code, Chapter 20.028 "Industrial Use Types"

A. Section 20.028.005 – General Description of Industrial Use Types

- a. Industrial use types include on-site production of goods by methods not agricultural or extractive in nature. They also include certain uses accessory to the above, as specified in Chapter 20.164, Accessory Use Regulations.

B. Section 20.028.010 – Custom Manufacturing

- a. "Custom manufacturing" means the on-site production of individually crafted goods using hand tools or mechanical equipment typical of the type or specifications found in a home shop or not creating noise, dust, fumes, visual impacts or electrical or water use in excess of home shop or hobby equipment and may include incidental on-site sales of those goods to retail consumers. Typical uses include ceramic studios, candle-making shops, custom jewelry manufacturing and wood working shops, or light assembly of components manufactured off-premises.

C. Section 20.028.015 – General Industrial

- a. "General industrial" means industrial plants primarily engaged in manufacturing, compounding, processing, assembling, packaging, treatment or fabrication of materials and products. Included are aggregate processing plants such as crushing, screening, washing and mixing plants.

D. Section 20.028.020 – Heavy Industrial

- a. "Heavy industrial" means all other industrial plants or other uses involving the compounding of radioactive materials, petroleum refining or manufacturing of explosives.

E. Section 20.028.025 – Explosive Storage

- a. "Explosives storage" means storage of any quantity of explosives as defined by Section 1200 of the California Health and Safety Code. Typical uses include storage in the course of manufacturing, selling or transporting explosives or in the course of blasting operations.

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Mendocino County Zoning Code, Chapter 20.328 “Coastal Industrial Use Types”

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A. Section 20.328.005 – General Description of Industrial Use Types.

On-site production or processing of goods by methods not agricultural or extractive in nature. They also include certain uses accessory to the above, as specified in Chapter 20.456 (Accessory Use Regulations)

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B. Section 20.328.010 – Coastal-Related Industrial.

- a. The coastal-related industrial use type includes coastal-related industrial uses, including but not limited to fish waste processing and fish processing of products for other than human consumption.

C. Section 20.328.015 – Coastal-Dependent Industrial.

- a. Coastal-dependent industrial uses require a maintained navigable channel to function, including, for example: public or private docks, water-borne commercial carrier import and export operations, ship/boat building and repair, commercial fishing facilities, including berthing and fish receiving, off-boat sales and fish processing when product is for human consumption (fish waste processing and fish processing of products for other than human consumption are permitted under the coastal-related use type), and aquaculture support facilities. Offshore mining, dredging, mineral or petroleum extraction processes, or the stockpiling or transfer of relative material for, are not included.

D. Section 20.328.020 – Custom Manufacturing: Light Industrial.

- a. Establishments primarily engaged in the on-site production of individually crafted goods using hand tools or mechanical equipment typical of the types or specifications found in a home shop, or using equipment or processes which do not create noise, dust, fumes, visual impacts, or electrical or water use in excess of home shop or hobby equipment, and which may include incidental on-site sales of those goods to retail consumers. Typical uses include ceramic studios, candle-making shops, custom jewelry manufacturing, woodworking shops, printing shops, custom textile manufacturing or light assembly of components manufactured off-premises.

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E. Section 20.328.025 – General Industrial.

- a. Industrial plants primarily engaged in manufacturing, compounding, processing, assembling, packaging, treatment, fabrication or recycling of materials and products. Included are white metal and appliance recycling and processing and aggregate processing plants such as crushing, screening, washing and mixing plants.

F. Section 20.328.030 – Heavy Industrial.

- a. All other industrial plants or other uses not included within the General Industrial Use Type involving the compounding of radioactive materials or manufacturing of explosives.

This section is not limited to the afore-mentioned use types, and shall additionally include the permitted uses, uses subject to a minor use permit, and uses subject to a major use permit as described in the I, I-1, I-2 and P-1 Zoning Ordinances within the Title 20 – Zoning Ordinance, Divisions I and II of the Mendocino County Zoning Code.

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Sec. 6.35.050 Findings.

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The Board of Supervisors of Mendocino County finds that it is in the public's interest to preserve and protect industrial land and operations within the County of Mendocino and to specifically protect these lands for exclusive industrial use. The purposes of this Chapter, therefore, are to promote the general health, safety and welfare of the County, to preserve and protect for exclusive commercial use those lands zoned for industrial use, to support and encourage continued industrial operation in the County, and to disclose to prospective purchasers and residents of property adjacent to or near to industrial operation of the inherent potential ramifications associated with such purchase of residence including, but not limited to, the sounds, odors, dust, and chemicals that may accompany industrial operations.

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6.35.060 Disclosure

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(A) CONSUMER DISCLOSURE BY SELLER. A person who is acting as an agent for the seller of real property which as long as it is zoned "Industrial Land", or which may be located within 300 feet of land zoned "Industrial Land", or the seller of real property if he or she is acting without an agent for as long as it is zoned "Industrial Land", or may be located within 300 feet of land zoned "Industrial Land" shall disclose to the prospective purchaser that:

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The property described herein may be zoned as "Industrial Land", or may be located within 300 feet of such land, and residents of the property may be subject to inconvenience or discomfort arising from use of machinery, and from the pursuit of industrial operations including, but not limited to, assembly, manufacturing, cutting, drilling, machining, metalworking, milling, punching, "tapping", soldering, transportation of materials and goods, and welding. All of these activities, and others not mentioned in the non-exclusive preceding list, may generate light, glare, dust, smoke, noise and odor, all of which may occur 24 hours a day, 7 days a week. Mendocino County has established zoning for industrial land which sets as a priority the industrial use of the lands included therein, and residents of such property, or within 300-feet of the border of zoned areas, should be prepared to accept such inconvenience or discomfort as normal and necessary to industrial operation.

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(B) DISCLOSURE IN DOCUMENTS. The disclosure statement set forth in Section 6.35.060(A) shall be included in a document that a purchaser, lessee or transferee signs evidencing the sale, purchase, transfer, or lease of real property zoned "Industrial Land."

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(C) DISCLOSURE IN DISCRETIONARY PERMITS. Where a building designed for residential occupancy is to be located on property which, as long as it is zoned "Industrial Land", or on property which may be located within 300 feet of land zoned "Industrial Land", the owners of the property shall, prior to issuance of a discretionary permit, be required to sign a statement of acknowledgement on forms approved by Planning and Building Services containing the following statement:

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The property described herein may be zoned as "Industrial Land", or may be located within 300 feet of such land, and residents of the property may be subject to inconvenience or discomfort arising from use of machinery, and from the pursuit of industrial operations including, but not limited to, assembly, manufacturing, cutting, drilling, machining, metalworking, milling, punching, "tapping", soldering, transportation of materials and goods, and welding. All of these activities, and others not mentioned in the non-exclusive preceding list, may generate light, glare, dust, smoke, noise and odor, all of which may occur 24 hours a day, 7 days a week. Mendocino County has established zoning for industrial land which sets as a priority the industrial use of the lands included therein, and residents of such property, or within 300-feet of the border of zoned areas, should be prepared to accept such inconvenience or discomfort as normal and necessary to industrial operation.

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In lieu of signing the statement required above, the owner may submit evidence that the statement set forth in Section 6.35.060(A) has been made part of a document evidencing the sale, purchase, transfer, or lease of the property on which the building is to be constructed.

Sec. 6.35.070 Installation of Signs.

The County may install or permit the installation of signs at the entry or within established industrial areas zoned as "Industrial Land" to notify and explain to purchasers that some of the land in this area is being used for industrial purposes and the operator's interests are protected by law. The prospective purchaser of such land or a residence is advised to check with local County agencies as to any regulation or requirements which may affect industrial property and of inherent potential problems associated with a purchase of such property or a residence in areas zoned as an "Industrial Land" and of the likely effect of such industrial operations.

Sec. 6.35.080 Precedence Clause.

It is the finding of the Board of Supervisors that this Ordinance is to take precedence over all ordinances or parts of ordinance or resolutions or parts of resolutions in conflict herewith and same are hereby repealed to the extent of such conflict and no further.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2013, by the following roll call vote:

AYES: _____
NOES: _____
ABSENT: _____

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

DAN HAMBURG, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

Deputy

APPROVED AS TO FORM:
THOMAS R. PARKER, County Counsel

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy

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CONSUMER DISCLOSURE BY SELLER. A person who is acting as an agent for the seller of real property which as long as it is zoned "Industrial Land", or is located within 300 feet of land zoned "Industrial Land", or the seller of real property if he or she is acting without an agent for as long as it is zoned "Industrial Land", or is located within 300 feet of land zoned "Industrial Land" shall disclose to the prospective purchaser that: The property described herein is zoned as "Industrial Land", or is located within 300 feet of such land and residents of the property may be subject to inconvenience or discomfort arising from use of machinery, and from the pursuit of industrial operations including, but not limited to, assembly, manufacturing, cutting, drilling, machining, metalworking, milling, punching, "tapping", soldering, and welding. All of these processes, and others not mentioned in the non-exclusive preceding list, occasionally generate dust, smoke, noise and odor, all of which may be experienced 24 hours a day, 7 days a week for an extended period of time. Mendocino County has established zoning for industrial land which sets as a priority the industrial use of the lands included therein, and residents of such property, or within 300-feet of the border of zoned areas, should be prepared to accept such inconvenience or discomfort as normal and necessary to industrial operation. ¶
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DISCLOSURE IN DOCUMENTS. The disclosure statement set forth in Section 6.____.060(A) shall be included in a document that a purchaser, lessee or transferee signs evidencing the sale, purchase, transfer, or lease of real ... [1]

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Sec. 6.____.060 Disclosure.

(A)

CONSUMER DISCLOSURE BY SELLER. A person who is acting as an agent for the seller of real property which as long as it is zoned "Industrial Land", or is located within 300 feet of land zoned "Industrial Land", or the seller of real property if he or she is acting without an agent for as long as it is zoned "Industrial Land", or is located within 300 feet of land zoned "Industrial Land" shall disclose to the prospective purchaser that:

The property described herein is zoned as "Industrial Land", or is located within 300 feet of such land and residents of the property may be subject to inconvenience or discomfort arising from use of machinery, and from the pursuit of industrial operations including, but not limited to, assembly, manufacturing, cutting, drilling, machining, metalworking, milling, punching, "tapping", soldering, and welding. All of these processes, and others not mentioned in the non-exclusive preceding list, occasionally generate dust, smoke, noise and odor, all of which may be experienced 24 hours a day, 7 days a week for an extended period of time. Mendocino County has established zoning for industrial land which sets as a priority the industrial use of the lands included therein, and residents of such property, or within 300-feet of the border of zoned areas, should be prepared to accept such inconvenience or discomfort as normal and necessary to industrial operation.

(B)

DISCLOSURE IN DOCUMENTS. The disclosure statement set forth in Section 6.____.060(A) shall be included in a document that a purchaser, lessee or transferee signs evidencing the sale, purchase, transfer, or lease of real property zoned "Industrial Land", or is located within 300 feet of such land.

(C)

DISCLOSURE IN BUILDING PERMITS. Where a building designed for residential occupancy is to be located on property which, as long as it is zoned "Industrial Land", or on property which is located within 300 feet of land zoned "Industrial Land", the owners of the property shall, prior to issuance of a building permit, be required to sign a statement of acknowledgement on forms approved by Planning and Building Services containing the following statement:

The property described herein on which the proposed structure is to be built is zoned as "Industrial Land", or is located within 300 feet of such land and residents of this property may be subject to inconvenience or discomfort arising from use of machinery, and from the pursuit of industrial operations including, but not limited to, assembly, manufacturing, cutting, drilling, machining, metalworking, milling, punching, "tapping", soldering, and welding. All of these processes, and others not mentioned in the non-exclusive preceding list, occasionally generate dust, smoke, noise and odor, all of which may be experienced 24 hours a day, 7 days a week for an extended period of time. Mendocino County has established zoning for industrial land which sets as a priority the

industrial use of the lands included therein, and residents of such property, or within 300-feet of the border of zoned areas, should be prepared to accept such inconvenience or discomfort as normal and necessary to industrial operation.

In lieu of signing the statement required above, the owner may submit evidence that the statement set forth in Section 6.____.060(A) has been made part of a document evidencing the sale, purchase, transfer, or lease of the property on which the building is to be constructed.