



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 20-743

September 15, 2020

Introduced: 9/11/2020

Current Status: Draft

Version: 2

Matter Type: General Agenda Item

Introduce, waive reading, and adopt an urgency ordinance suspending for ninety (90) days the processing of all applications for construction of water wells, with a specified emergency exemption, in order to study the impact of the California Supreme Court case *Protecting our Water and Environmental Resources et al., v. County of Stanislaus, et al.*, California Supreme Court case no. S251709, on Chapter 15.08 of the Monterey County Code (4/5th vote).

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt an urgency ordinance suspending for ninety (90) days the processing of all applications for construction of water wells, with a specified emergency exemption, in order to study the impact of the California Supreme Court case *Protecting our Water and Environmental Resources et al., v. County of Stanislaus, et al.*, California Supreme Court case no. S251709, on Chapter 15.08 of the Monterey County Code (4/5th vote).

SUMMARY/DISCUSSION:

On August 27, 2020, the California Supreme Court issued its decision in the case *Protecting our Water and Environmental Resources et al., v. County of Stanislaus, et al.*, California Supreme Court case no. S251709. That decision may require environmental review, pursuant to the California Environmental Quality Act, when the County considers applications to drill and construct water wells if the decision to issue the permit involves the exercise of discretion by the decision-making authority.

Chapter 15.08 of the Monterey County Code sets forth the application and decision-making process for the County in considering applications for the drilling and construction of water wells. The Chapter sets forth some regulations that would appear to be purely ministerial in their application; however, the Chapter also allows the Health Officer (the approving authority for water well permits) to impose other, unspecified conditions, grant variances, and deny an application if in his/her judgment it would defeat the purposes of the Chapter, which could be considered discretionary authority making the approval of such permits subject to environmental review.

There are currently a number of water well permit applications pending, and others will undoubtedly be filed in the future. The consideration of those applications may implicate the Supreme Court case, and it is appropriate to immediately suspend, for a period not to exceed ninety (90) days, the processing of all water well construction permit applications so that County Counsel and staff of the Health Department may assess the impact of the case on Chapter 15.08, and make any necessary or appropriate recommendations to the Board of Supervisors.

A limited emergency exception to the permit application suspension is appropriate, where a catastrophic event, such as a casing collapse, or other emergency condition that makes an existing water well physically unable to operate exists, or is imminent. In such a circumstance, as determined by the County, a new well may be drilled complying with specific, ministerial requirements.

OTHER AGENCY INVOLVEMENT:

The Health Department concurs in the recommendation. County Counsel has approved the ordinance as to form.

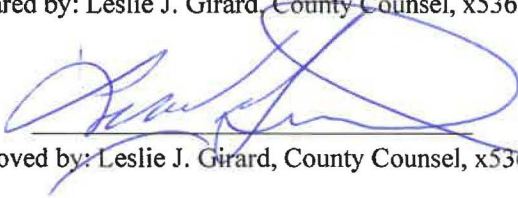
FINANCING:

There is no direct financial impact to the County from this ordinance.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

- ☐ Economic Development
- ☐ Administration
- ☐ Health & Human Services
- ☒ Infrastructure
- ☐ Public Safety

Prepared by: Leslie J. Girard, County Counsel, x5365



Approved by: Leslie J. Girard, County Counsel, x5365

Attachments: Draft urgency ordinance

**AN URGENCY ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF
CALIFORNIA, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 25123,
SUSPENDING IMMEDIATELY AND FOR A PERIOD OF NINETY DAYS THE
PROCESSING OF APPLICATIONS FOR THE DRILLING AND CONSTRUCTION OF
ANY WATER WELLS**

County Counsel Summary

This urgency ordinance suspends immediately and for a period of ninety days the processing of applications for the drilling and construction of any water wells. This ordinance is necessary to study the impact of the case Protecting our Water and Environmental Resources et al., v. County of Stanislaus, et al., California Supreme Court case no. S251709. This ordinance is an urgency ordinance pursuant to Government Code section 25123 and will take effect immediately upon adoption.

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

SECTION 1. FINDINGS AND DECLARATIONS

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey (“County”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its residents.

B. Pursuant to Government Code section 25123, to protect against an immediate threat to the public safety, health, and welfare, the County may adopt an urgency ordinance that takes effect immediately.

C. On August 27, 2020, the California Supreme Court issued its decision in the case *Protecting our Water and Environmental Resources et al., v. County of Stanislaus, et al.*, California Supreme Court case no. S251709, which decision may require environmental review, pursuant to the California Environmental Quality Act (“CEQA”), when the County considers applications to drill and construct water wells if the decision to issue the permit involves the exercise of discretion by the decision-making authority.

D. Chapter 15.08 of the Monterey County Code sets forth the application and decision-making process for the County in considering applications for the drilling and construction of water wells, and such process includes the potential for certain discretionary determinations by the County Health Officer in considering permit applications.

E. An immediate review of Chapter 15.08 is necessary in order to determine whether and to what extent the Supreme Court decision affects the processing of water well applications by Monterey County.

F. In order to conduct such review without creating legal liability to the County for considering an application without appropriate environmental review and to protect the public health, safety and welfare immediately by enabling County to consider processes for

environmental review of well construction applications where appropriate before County approves further wells, an immediate and temporary suspension of processing water well permit applications, not to exceed ninety (90) days, is necessary and appropriate.

G. The adoption of this ordinance is statutorily exempt from CEQA because it is a measure necessary to protect the County from a current and immediate threat to public health, safety and welfare. Adoption of the ordinance also qualifies for a categorical exemption under CEQA Guidelines section 15307 and 15308 because the ordinance involves procedures to protect the environment.

SECTION 2. APPLICABILITY

This ordinance applies in the unincorporated area of the County of Monterey.

SECTION 3. SUSPENSION OF WELL PERMIT APPLICATION PROCESSING

Effective immediately upon the adoption of this ordinance, the Health Department and, as applicable, any County decision-maker on appeal, are directed to suspend the processing of applications for water well construction permits pursuant to Chapter 15.08 of the Monterey County Code, including permit applications currently pending or to be filed. The suspension shall last for a period not to exceed ninety (90) days from the effective date of this ordinance. Water well permit applications may still be accepted, but the County will not make a decision on any pending or new water well construction permit application during the suspension period.

SECTION 4. EMERGENCY EXCEPTION

The suspension set forth in Section 3, above, shall not apply to the processing of an application for a water well construction permit where the proposed well is necessary to replace an existing well that has experienced a catastrophic collapse or other condition that renders the well physically incapable of operating, or such collapse or condition is imminent, as determined by the County. In such case, a permit for a new well may be processed where the new well shall not be designed to pump more water than the existing well has on record for the preceding five years, and shall otherwise comply with the provisions of Sections 15.08.110 and 15.08.140 of the Monterey County Code.

SECTION 5. LEGAL REVIEW

County Counsel and appropriate staff from the County Health Department are directed to immediately undertake a review of the Supreme Court case and how it may apply to Chapter 15.08. A report back shall be made to the Board of Supervisors no later than ninety (90) days after the effective date of this ordinance on the applicability of the Supreme Court case, and shall include any necessary or appropriate recommendations for the amendment of the County Code.

SECTION 6. NO TAKING OF PROPERTY INTENDED

Nothing in this ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific evidence in the administrative record, that the application of one or more of the provisions of this ordinance

would effect an unconstitutional taking of private property, the Board shall disregard such provisions to the extent necessary to avoid such unconstitutional taking.

SECTION 7. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. EFFECTIVE DATE

In light of the recitals in this ordinance, the Board declares that this ordinance is adopted in compliance with Government Code Section 25123 and is necessary as an urgency measure for immediately preserving the public health, safety, and welfare. This ordinance shall take effect immediately upon adoption for the reasons set forth herein.

PASSED AND ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Christopher Lopez
Chair, Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

Leslie J. Girard
County Counsel