

ORDINANCE NO. 2023-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING THE ESCONDIDO ZONING CODE TO ALLOW FOR AN INCREASE IN FENCE HEIGHT ON A CASE BY CASE BASIS IN THE INDUSTRIAL AND COMMERCIAL ZONES THROUGH THE ADMINISTRATIVE ADJUSTMENT PERMIT PROCESS

The City Council of the City of Escondido, California does ordain as follows:

SECTION 1. The City Council makes the following findings:

a) Onward Energy (“Applicant”) filed a land use development application (Planning Case Nos. PL22-0603, PL22-0604, and PL23-0239), constituting a request for a Zone Map Amendment to amend the zoning designation from Planned Development Industrial (PD-I) to General Industrial (M-2); a Zone Text Amendment to amend the Escondido Zoning Code to allow for an increase in fence height for commercial and industrial zone properties through the Administrative Adjustment Permit process; and a Major Plot Plan Permit, to permit construction of a lithium-ion battery storage utility (“Project”) on a 6.2 gross acre site location at 555 N Tulip Street (APN: 232-131-25-00), in the Planned Development (PD-I) zone; and

b) The subject property is all that real property described in Exhibit “A,” which is attached hereto and made a part hereof by this reference as though fully set forth herein (“Property”);

c) The intent and purpose of the Zone Text Amendment is to amend the Escondido Zoning Code to allow for an increase in fence height in commercial and industrial zone properties through the Administrative Adjustment Permit process; and

d) A verified application was submitted to, and processed by the Planning Division of the Development Services Department as Planning Case No. PL23-0239, and seeks approval of a Zone Text

Amendment to amend the Escondido Zoning Code to allow for an increase in fence height for commercial and industrial zone properties through the Administrative Adjustment Permit process, unless the request is associated with a discretionary action requiring a public hearing; and

e) Said application was processed in accordance with the rules and regulations of the Escondido Municipal and Zoning Code, and the applicable procedures and time limits specified by the Permit Streamlining Act (Government Code Section 65920 et. seq) and the California Environmental Quality Act (Public Resources Code Section 210000 et. seq); and

f) The Planning Division of the Development Services Department completed its review and scheduled and held a public hearing regarding the Zone Text Amendment before the Planning Commission on October 24, 2023. Following the public hearing on October 24, 2023, the Planning Commission adopted Resolution No. 2023-19, which recommended that the City Council approve the Zone Text Amendment and amend the Escondido Zoning Ordinance.

SECTION 2. Proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and the City Council on this issue.

SECTION 3. The City Council did on December 6, 2023, hold a duly noticed public hearing as prescribed by law. Evidence was submitted to and considered by the City Council including without limitation:

- a) Written information including application materials and other written and graphical information.
- b) Oral testimony from City staff, interested parties, and the public.

- c) The City Council staff report, dated December 6, 2023, which along with its attachments is incorporated herein by this reference as though fully set forth herein, including the Planning Commission's recommendation on the request.
- d) Additional information submitted during the public hearing.

SECTION 4. Upon consideration of the Findings of Fact, attached as Exhibit "B" and incorporated herein by this reference as though fully set forth, the December 06, 2023, City Council staff report, and the Planning Commission recommendation, based on the totality of the record and evidence described and referenced in this Ordinance, the City Council approves the amendment the Escondido Zoning Code, and incorporated herein as though fully set forth herein.

SECTION 5. ENVIRONMENTAL REVIEW. On December 6, 2023, the City Council adopted Resolution No. 2023-160 for adoption of the Initial Study/Mitigated Negative Declaration and adoption of a Mitigation and Monitoring Reporting Program for the Project. A Notice of Determination will be filed with the County of San Diego per CEQA Guidelines Section 15075.

SECTION 6. The City Council hereby approves the amendment to the Escondido Zoning Code as shown on Exhibit "C" hereto and incorporated herein by this reference as though fully set forth herein.

SECTION 7. Concurrently with the action on this Ordinance, the City Council is taking a number of actions in furtherance of the Project, as generally described in the December 6, 2023, City Council staff report. No single component of the series of actions made in connection with the Project shall be effective unless and until is approved by an Ordinance or resolution and is procedurally effective in the matter provided by State Law. Therefore, this Ordinance shall become effective and operative only if City Council Resolution No. 2023-160 is adopted prior to adoption of this Ordinance.

SECTION 8. SEVERABILITY. If any section, subsection sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 9. As of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 10. The City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation for the City of Escondido.

SECTION 11. The City Clerk is hereby directed to update the Escondido Zoning Code to reflect the amendment approved by this Ordinance as shown in Exhibit "C."

SECTION 12. This Ordinance shall become effective 30 days from the date of the passage.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 10th day of JANUARY, 2024 by the following vote to wit:

AYES : Councilmembers: C. GARCIA, J. GARCIA, MARTINEZ, MORASCO, WHITE

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

DocuSigned by:
Dane White
19FFE5DB8C3B409...
DANE WHITE, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Zack Beck
A58535D08BDC1430...
ZACK BECK, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, Zack Beck, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2023-16 passed at a regular meeting of the City Council of the City of Escondido held on the 6th day of December, 2023, after having been read at the regular meeting of said City Council held on the 10th day of January, 2024.

DocuSigned by:
Zack Beck
A58535D08BDC1430...
ZACK BECK, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2023-16

EXHIBIT "A"**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 5 IN BLOCK 302 OF THE SUBDIVISION OF RANCHO RINCON DEL DIABLO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 724](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 1892, LYING NORTHEASTERLY AND NORTHERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 5, BEING ALSO THE MOST NORTHERLY CORNER OF THAT PORTION OF CALIFORNIA STATE HIGHWAY II-SD-15, AS DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED [APRIL 17, 1973, AS FILE NO. 73-100587 OF OFFICIAL RECORDS](#); THENCE ALONG THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, SOUTH 35° 12' 53" EAST, 206.01 FEET TO THE SOUTHERLY BOUNDARY OF SAID LOT 5; THENCE ALONG SAID SOUTHERLY BOUNDARY, SOUTH 77° 00' 00" EAST, 34.27 FEET TO THE MOST WESTERLY CORNER OF LAND DESCRIBED IN PARCEL 2-A IN THAT FINAL ORDER OF CONDEMNATION UNDER SUPERIOR COURT CASE NO. 290361, RECORDED [JANUARY 5, 1966, AS FILE NO. 2167, OF OFFICIAL RECORDS](#), BEING A POINT ON THE ARC OF A 960.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 00° 06' 39" WEST TO SAID POINT; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL 2-A AS FOLLOWS:

EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04° 51' 03" A DISTANCE OF 81.28 FEET; TANGENT TO SAID CURVE, SOUTH 85° 15' 36" EAST, 64.70 FEET; SOUTH 04° 44' 24" WEST, 10.00 FEET TO A POINT ON THE ARC OF A 790.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 04° 44' 24" WEST TO SAID POINT; EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17° 05' 57" A DISTANCE OF 235.76 FEET; THENCE ALONG THE PROLONGATION OF A RADIAL LINE OF SAID CURVE SOUTH 12° 21' 33" EAST, 5.00 FEET TO A POINT ON THE EASTERLY CONTINUATION OF THE ARC OF A 795.00 FOOT RADIUS CURVE, CONCENTRIC WITH THE LAST ABOVE DESCRIBED 790.00 FOOT RADIUS CURVE; AND EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 27° 18' 03" A DISTANCE OF 378.81 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 5.

EXCEPTING FROM SAID LOT 5 IN BLOCK 302, THE NORTHEASTERLY 9.00 FEET THEREOF.

APN: [232-131-25](#)

EXHIBIT "B"**PLANNING CASE NOS. PL22-0603/PL22-0604/PL23-0239****FACTORS TO BE CONSIDERED / FINDINGS OF FACT****Environmental Determinations:**

1. Pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et. seq.) ("CEQA"), and its implementing regulations (14 C.C.R. § 15000 et seq.) ("CEQA Guidelines"), the City of Escondido ("City") is the Lead Agency for the project ("Project"), as the public agency with the principal responsibility for approving the Project.
2. An Initial Study/Mitigated Negative Declaration ("IS/MND") for the Project was prepared, published, circulated and reviewed in accordance with the requirements of CEQA, the CEQA Guidelines, and the local environmental procedures. The decision-making body of the Lead Agency shall adopt the proposed IS/MND only if:
 - It finds on the basis of the whole record before it that there is no substantial evidence the project will have a significant effect on the environment, and
 - The IS/MND reflects the Lead Agency's independent judgment and analysis.
3. The Final IS/MND and Mitigation Monitoring and Reporting Plan ("MMRP"), collectively constitute the environmental documentation under and pursuant to CEQA, the CEQA Guidelines, and local environmental procedures relating to the project, and shall be referred to herein collectively as the "CEQA Documents."
4. The City Council has received the material record supporting all of the CEQA documents for the project. The City Council, finds the following:
 - The Final IS/MND reflects the City's independent judgment and analysis.
 - That there is no substantial evidence that the Project or any of its aspects could result in significant adverse impacts, or that cannot be fully mitigated. All previously identified impacts have been mitigated to less than a significant level.
 - The City Council also finds that the mitigation measures listed in the Mitigation Monitoring and Reporting Program ("MMRP") will not cause any potentially significant effects.

- The Final IS/MND has been completed in compliance with CEQA and it constitutes a complete, accurate, adequate and good faith effort at full disclosure under CEQA.
5. Mitigation measures are recommended to be incorporated as part of the adoption of the Mitigated Negative Declaration. The recommended approval of the Project also includes the adoption of the MMRP, attached hereto this Resolution.
 6. Pursuant to Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines section 15091(e), all documents and other materials which constitute the record of proceedings are located at the City of Escondido, City Civic Center. The City Clerk, whose office is located at 201 North Broadway, Escondido CA 92025, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the Planning Commission's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act.

Zone Text Amendment(Escondido Zoning Code Section 33-1263)

With respect to Planning Case No. PL23-0239 (Zone Text Amendment), the Planning Commission finds the following:

1. *That the public health, safety and welfare will not be adversely affected by the proposed change;*

The Project will amend the Escondido Zoning Ordinance (Chapter 33) to allow for an increase in fence height for commercial and industrial zoned properties by twenty-five percent (25%) and fifty percent (50%), respectively, through an administrative adjustment process subject to review by the City of Escondido and the requirements set forth within Article 61 of Chapter 33. The Zone Text Amendment is limited to the aforementioned zoning districts and would not adversely affect the public health, safety and welfare. The increase in fence/wall height would allow the Applicant to secure the site more effectively and would serve as a physical screen of the battery units.

2. *That the property involved is suitable for the uses permitted by the proposed zone;*

The Zone Text Amendment ("ZTA") would apply to only commercial and industrial zones, and would allow for an increase in fence/wall height on a case-by-case basis, reviewed and analyzed through the administrative adjustment process. The proposed ZTA is suitable for commercial and industrial zone properties in that it provides a mechanism for additional screening of a site for land use, and/or security purposes, which improves visual character of a property and supports public health, safety, and welfare.

3. *That the uses permitted by the proposed zone would not be detrimental to surrounding properties;*

The Zone Text Amendment is limited in scope and applicable to the industrial and commercial zones only. The ZTA does not include an expansion of permitted uses within these zoning districts, and in and of itself would not be detrimental to surrounding properties as walls/fences are permitted currently up to 8-feet in height. The administrative adjustment process requires public notification to surrounding properties even when not associated with a discretionary action requiring a public hearing.

4. *That the proposed change is consistent with the adopted general plan;*

The Zoning Text Amendment would allow for an increase in fence/wall height on a case-by-case basis for the industrial and commercial zones. The proposed change would be consistent with the adopted general plan as it would be limited to zones which have the least restrictive design guidelines and more intensive use allowances that may require screening of outdoor components permitted within the zone, such as the General Industrial (M-2) zoning district. Further, the proposed amendment would align with Land Use Policy 10.9, which seeks to “allow more flexible requirements affecting...screening of outside storage...depending on location and visibility from off-site areas on properties designated General Industrial.”

5. *That the proposed change of zone does not establish a residential density below seventy (70) percent of the maximum permitted density of any lot or parcel of land previously zoned R-3, R-4, or R-5 unless the exceptions regarding dwelling unit density can be made pursuant to the provisions set forth in Article 6;*

The Zone Text Amendment is limited to an increase in fence/wall height in the commercial and industrial zones. It would have no impacts to residential zoning densities.

6. *That the relationship of the proposed change is applicable to specific plans*

The Zone Text Amendment would be limited to Chapter 33 (Zoning) of the Escondido Municipal Code, and does not propose modifications to specific plan documents.

Exhibit "C"

ZONE TEXT AMENDMENT

Subsection (e) of Section 33-1221 of Division 2 of Article 61 of Chapter 33 of the Escondido Municipal Code is hereby repealed in its entirety and a new Subsection (e), and a new Subsection (f) of Section 33-1221 are hereby added as follows:

Sec. 33-1221. Administrative adjustment defined.

(e) Up to a twenty-five (25) percent increase in fence height for commercial zoned properties, and up to a fifty (50) percent increase in fence height for industrial zoned properties; and

(f) Other adjustments as specified by this chapter.

Subsection (c) of Section 33-1223 of Division 2 of Article 61 of Chapter 33 of the Escondido Municipal Code is hereby repealed in its entirety and a new Subsection (c) of Section 33-1223 is hereby added as follows:

Sec. 33-1223. Application and procedure.

(c) Administrative Adjustment Procedure. The director shall review the requested adjustment, the applicant's justification, the compatibility with adjacent properties or improvements and any other pertinent factor(s). If an administrative adjustment is associated with a discretionary application that requires a public hearing, the request shall be reviewed by the appropriate decision-making body for the discretionary action, and a separate application or Notice of Intended Decision is not required.