



NEIGHBORHOOD DEVELOPMENT SERVICES DEPARTMENT

Planning Division

STAFF REPORT

Anti-Fracking Ordinance 2017-05 (TXT-17-009)

Prohibition of Well Stimulation for Oil and Natural Gas Exploration and Production.

To: Planning and Zoning Advisory Board

Thru: Scott Williams, Neighborhood Development Services Director

Thru: Michele Norton, AICP, Planning Manager

From: Nicole Galehouse, Project Planner

Date: January 31, 2017, amended March 9, 2017

I. GENERAL INFORMATION

Project: Petition No. TXT-17-009, Ordinance No. 2017-05, Amending the City of North Port Unified Land Development Code to prohibit well stimulation for oil and natural gas excavation by amending Chapter 14 Earthmoving, dredge and fill regulations, Article I General, Section 14-5 General Provisions; and Amending Chapter 61 Definitions, Section 61-3 Definitions and Word Usage.

Request: Approval of Ordinance No. 2017-05

Applicant: City of North Port

Owner(s): N/A

Location: Citywide Ordinance

Property Size: N/A

II. BACKGROUND

On January 10, 2017, the City Commission of the City of North Port adopted a resolution supporting legislation that would enact a statewide ban on the use of hydraulic fracturing, acid fracturing, and well stimulation performed for the purpose of exploration and/or production of oil and natural gas in the State of Florida. At this meeting, it was also determined by the City Commission that further measures to prohibit these activities from taking place within City boundaries were desired. Florida Statutes Section 377.24(5) requires that prior to the Florida Department of Environmental Protection's approval of an application for a permit to drill a gas or oil well, the governing authority of the municipality shall have first duly approved the

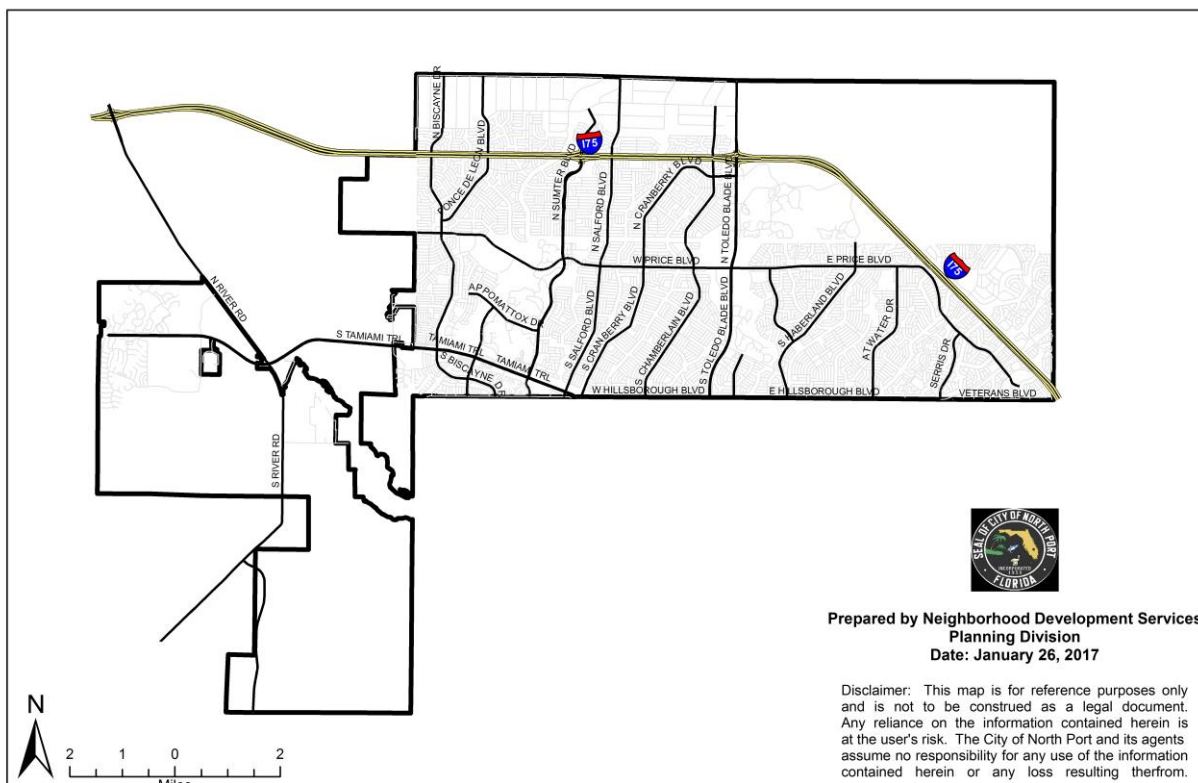
application for such permit by resolution if the well is located within the corporate limits of any municipality, however Florida's oil and gas regulations do not preempt the City from regulating hydraulic fracturing and other well stimulation techniques.

Well stimulation involves a well intervention, exploration, operation, or maintenance procedure performed by injecting fluid into a rock formation in order to increase production at an oil or gas well. This includes but is not limited to, hydraulic fracturing, acidizing, and acid fracturing of oil or gas wells. Oil and gas well stimulations involve the use of chemical combinations from a list of hundreds of chemicals, some of which are determined by the Center for Disease Control (CDC) to be carcinogenic or which could otherwise pose a widespread and significant risk to public health, safety, and the environment. Well stimulation through hydraulic fracturing is exempt from important regulations meant to protect public health and the environment, specifically sections of the Clean Water Act, Clean Air Act, Safe Drinking Water Act, Comprehensive Environmental Response Act, Compensation and Liability Act (CERCLA), and the National Environmental Protection Act. Use of these hydraulic fracturing mixes exposes air, aquifers, and adjacent land and surface waters to the risk of contamination through spills and accidents, open pit storage, truck transport on roadways, and activities during well development.

Much of Florida's water supply comes from aquifers in highly-permeated limestone formations which are vulnerable to contamination from hydraulic fracturing activities. The largest aquifer in the southeastern United States is the Floridan, which is found beneath the entire state of Florida and parts of Alabama, Georgia, and South Carolina. The Floridan aquifer averages 1,000 feet thick and freshwater can extend to a depth of 2,000 feet below land surface. While much hydraulic fracturing activities take place thousands or miles below the surface, an increasing number of shallow wells are appearing, which also comes with an increased risk to the aquifers. In addition, hydraulic fracturing requires the use of hundreds of thousands to millions of gallons of water for each hydraulic fracturing event, and Florida Water Management Districts have declared an insufficient water supply for growth in the Central Florida region.

Many parcels within the boundaries of the City of North Port include a reservation of mineral rights. According to the most recent data available from the Sarasota County Property Appraiser, there are at least 72 properties in the City from which the subsurface rights have been split from the surface property. In many cases, property owners are unaware that they do not own the mineral rights underneath their homes. The implications are far-reaching, from the possibility of mining operations taking place on site, to property-tax assessment, loan, and insurance issues.

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Staff recommends approval of the amendments to the Unified Land Development Code, Chapter 14 Earthmoving, dredge and fill regulations, Article I General, Section 14-5 General Provisions; and Amending Chapter 61 Definitions, Section 61-3 Definitions and Word Usage.

The Planning and Zoning Advisory Board (PZAB) heard this item at a regularly scheduled meeting on February 16, 2017. The board felt that fracking is not a concern in the state of Florida, and even more so not a concern within the City of North Port. The general opinion was that an ordinance banning fracking was superfluous and unnecessary. The board voted unanimously to recommend disapproval of this ordinance.

The North Port City Commission heard this item on March 7, 2017. It came to light that the amendments proposed had been inserted into an old version of Chapter 14, which had been amended in September 2016. This has been fixed, and the amendments have been added into the correct version of Chapter 14.

City Commission also recommended that the definitions be moved into Chapter 14, instead of Chapter 61, as some of them were narrow and specific to the subject at hand. It was also requested that the definitions be adapted, as some were defining terms in other definitions that were not used in the amendment language itself. Staff has made these changes and feels that the updated version meets the requests of Commissioners.

IV. SITE INFORMATION

Land Use

Adopted Future Land Use Map Designation: City-wide

Adopted Zoning Map Designation: City-wide

Existing Land Use(s): City-wide

Surrounding Land Uses: City-wide

Services and Facilities

Potable Water: N/A

Sanitary Sewer: N/A

Transportation: N/A

Environmental

Conservation: N/A

Flood Zone: N/A

Fiscal Impact

☐ Not Applicable

☒ No Impact

☐ Fiscal Impact Confirmed

V. STAFF ANALYSIS

Staff felt that the appropriate location to place regulations related to well stimulation for oil and natural gas exploration and production is in Chapter 14 Earthmoving of the Unified Land Development Code (ULDC). The intent of this chapter is “to preserve, protect, and improve the public health, safety, comfort, good order, appearance and general welfare, and to conserve and to protect the natural resources within the City of North Port while promoting opportunities for responsible development including associated earthmoving activities.” The proposed amendment adds language to prohibit “any oil or natural gas exploration or production that uses well stimulation within the boundaries of the City of North Port” or that originates “outside of the boundaries of the City of North Port that in any way enters onto, into, or under the ground within the boundaries of the City of North Port.” Definitions have been added to

Chapter 61 for clarity. Staff finds that these amendments protects the health and welfare of the residents of the City of North Port, along with the community environment and are consistent with the Comprehensive Plan.

Future Land Use Goals, Objectives, and Policies

Goal 1: Ensure that the character and location of land uses maximize the potential for economic benefit and the enjoyment of natural and man-made resources by citizens while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation.

Objective 9: Revised land development regulations, consistent with F.S. 163.3202 (1), shall be adopted to ensure that development activities provide for the protection of natural, historic, and archeological resources.

Policy 9.5: The City land development regulations, consistent with F.S. Chapter 163.3202(1), shall address and regulate activities having the potential to degrade water quality, or impact future and existing wellfields.

Policy 9.6: Extraction of natural resources shall be permitted as a conditional use only where compatible with existing and proposed land uses.

VI. REVIEW PROCESS

Staff reviewed this petition for a Text Amendment and found this petition is consistent with the City's Comprehensive Plan. The City Attorney reviewed and approved Ordinance 2017-05 as to form and correctness.

VII. PUBLIC NOTICE

The petition was advertised in a newspaper of general circulation within the City of North Port on January 31, 2017 pursuant to the provisions of Section 166.041(3)(a), Florida Statutes and Section 9.01(b) of the Charter of the City of North Port, and Chapter 1 Article II, Section 1-12 of the City's Unified Land Development Code (ULDC) as amended (**Exhibit A**). This item was readvertised for first and second reading on March 28, 2017 and April 11, 2017, respectively, in a newspaper of general circulation on March 14, 2017 (**Exhibit B**).

VIII. PUBLIC HEARING SCHEDULE

**Planning and Zoning Advisory Board
Public Hearing**

February 16, 2017
9:00 AM or as soon thereafter

Petition No. TXT-17-009

Anti-Fracking Ordinance


**City Commission 1st Reading
Public Hearing**

March 28, 2017
6:00 PM or as soon thereafter

**City Commission 2nd Reading
Public Hearing**

April 11, 2017
1:00 PM or soon thereafter

EXHIBIT A



PUBLIC NOTICE - CITY OF NORTH PORT

NOTICE OF INTENT TO AMEND THE CODE OF THE
CITY OF NORTH PORT AND THE CITY OF NORTH PORT
UNIFIED LAND DEVELOPMENT CODE
PROPOSED ORDINANCE NO. 2017-05

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 166.041(3)(a), Florida Statutes and Section 9.01(b) of the Charter of the City of North Port, and Chapter I, Article II, Section 1-12 of the City's Unified Land Development Code (ULDC), that the City of North Port proposes to adopt Ordinance No. 2017-05, Amendments to the Code of the City of North Port and the City of North Port Florida Unified Land Development Code (ULDC).

A Public Hearing will be held before the Planning and Zoning Advisory Board designated as the Local Planning Agency (LPA) on **Thursday, February 16, 2017 at 9:00 a.m.**, or as soon thereafter as the matter will be heard, in the **City Hall Commission Chambers, 4970 City Hall Boulevard, North Port, Florida 34286.**

A Public Hearing for the first reading of Ordinance 2017-05 will be held before the North Port City Commission in Commission Chambers on **Tuesday, March 7, 2017 at 1:00 p.m.**, or as soon thereafter as the matter may be heard. The second and final reading will be held before the North Port City Commission in Commission Chambers on **Tuesday, March 28, 2016 at 6:00 p.m.**, to consider enactment of Ordinance No. 2017-05.

These Public Hearings will be held in the North Port City Hall Commission Chambers, 4970 City Hall Boulevard, North Port, Florida, 34286.

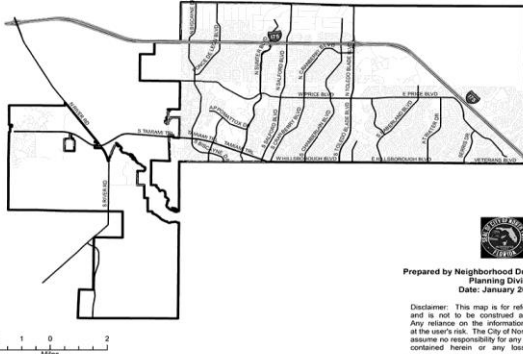
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AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE CITY OF NORTH PORT UNIFIED LAND DEVELOPMENT CODE TO PROHIBIT WELL STIMULATION FOR OIL AND NATURAL GAS EXCAVATION BY AMENDING CHAPTER 14 EARTHMOVING, DREDGE AND FILL REGULATIONS, ARTICLE I GENERAL, SECTION 14-5 GENERAL PROVISIONS; AMENDING CHAPTER 61 DEFINITIONS, SECTION 61-3 DEFINITIONS AND WORD USAGE; PROVIDING FOR FINDINGS; PROVIDING FOR ADOPTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODING OF AMENDMENTS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

City of North Port

Petition Number TXT-17-009
Ordinance No. 2017-05



Prepared by Neighborhood Development Services
Planning Division
Date: January 26, 2017

Disclaimer: This map is for reference purposes only and is not to be construed as a legal document. Any reliance on the information contained herein is at the user's risk. The City of North Port and its agents assume no responsibility for any use of the information contained herein or any loss resulting therefrom.

Note: This map covers all of the incorporated areas of the City of North Port, Florida. The proposed Ordinance 2017-05, (Adoption of Amendments to the Code of the City of North Port and the City of North Port Unified Land Development Code) applies to the entire City of North Port as depicted on this map.

All interested parties are invited to appear and be heard in respect to this Ordinance at the public hearings in the City Hall Commission Chambers. Written comments filed with the Planning and Zoning Advisory Board and the City Commission will be heard and considered and will be made a matter of public record at these meetings. These public hearings may be continued from time to time as announced at the hearings, as may be found necessary. The file pertinent to Ordinance 2017-05, TXT-17-009, may be inspected by the public at the Neighborhood Development Services Department, Planning Division, and in the City of North Port City Clerk's Office, 4970 City Hall Boulevard, North Port, Florida 34286, during regular business hours.

NO STENOGRAPHIC RECORD BY A CERTIFIED COURT REPORTER IS MADE OF THESE MEETINGS. ACCORDINGLY, ANY PERSON WHO MAY SEEK TO APPEAL A DECISION INVOLVING THE MATTERS NOTICED HEREIN WILL BE RESPONSIBLE FOR MAKING A VERBATIM RECORD OF THE TESTIMONY AND EVIDENCE AT THESE MEETINGS UPON WHICH ANY APPEAL IS TO BE BASED (SEE F.S.S. 286.0105).

NOTE: PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY CLERK'S OFFICE 48 HOURS IN ADVANCE OF THE MEETING (SEE F.S.S. 286.26).

NONDISCRIMINATION: The City of North Port does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services.

AMERICAN WITH DISABILITIES ACT OF 1990 - The North Port City Hall is wheelchair accessible. Special parking is available on the west side of City Hall and the building may be accessed from the parking area. Persons with hearing difficulties should contact the City Clerk to obtain a hearing device for use during meetings.

Patsy C. Adkins, MMC
City Clerk

Publish on Tuesday, January 31, 2017. adno=712343

EXHIBIT B

PUBLIC NOTICE

CITY OF NORTH PORT NOTICE OF INTENT TO AMEND THE CODE OF THE CITY OF NORTH PORT AND THE CITY OF NORTH PORT UNIFIED LAND DEVELOPMENT CODE PROPOSED ORDINANCE NO. 2017-05

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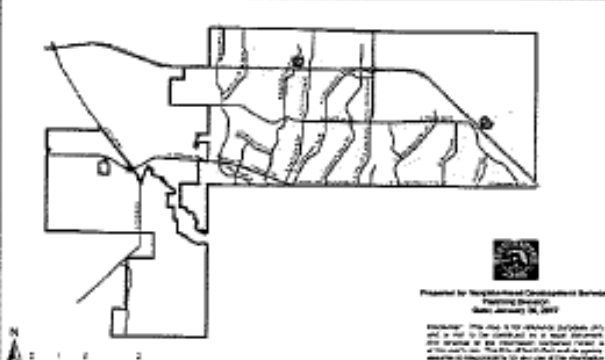
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Section Number TXT-17-009
Ordinance No. 2017-05



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