



City of North Port

ORDINANCE NO. 2017-05

(Amendments to 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, by adding a new Section 14-9 Oil or natural gas exploration or production and creating Article V Definitions)

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, BY ADDING A NEW SECTION 14-9 OIL OR NATURAL GAS EXPLORATION OR PRODUCTION AND CREATING ARTICLE V DEFINITIONS; 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.

WHEREAS, 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; and

WHEREAS, the City of North Port has used its zoning authority to address various forms of excavation and extraction activities; and

WHEREAS, 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; and

WHEREAS, the City reviewed information from environmental and conservation resources regarding well stimulation and the impacts such procedures have on the health, safety, and welfare to the residents of the City; and

WHEREAS, 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; and

WHEREAS, much of Florida's water supply comes from aquifers in highly-permeated limestone formations which are vulnerable to contamination from hydraulic fracturing activities; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, Florida's oil and gas regulations do not preempt the City from regulating hydraulic fracturing and other well stimulation techniques; and

WHEREAS, 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; and

WHEREAS, many parcels within the boundaries of the City of North Port include a reservation of mineral rights; and

WHEREAS, the residents of the City of North Port have a reasonable expectation that their local governments will endeavor to protect their health and welfare, along with that of the community environment; and

WHEREAS, on January 10, 2017, the City of North Port City Commission adopted Resolution 2017-R-01 supporting a statewide ban on hydraulic fracturing, acid fracturing, and well stimulation for the purpose of exploration of oil or natural gas in the State of Florida; and

WHEREAS, the City of North Port Planning and Zoning Advisory Board designated as the Local Planning Agency (LPA) held a public hearing on February 16, 2017 with due public notice to receive public comments on the revision of the Unified Land Development Code; and

WHEREAS, the Commission has held public hearings on March 7, 2017, March 28, 2017, and April 11, 2017 with due public notice to review the recommendations of the North Port Planning and Zoning Advisory Board, and to receive public comments on the revision of the Unified Land Development Code; and

WHEREAS, the Commission has determined that the proposed amendments serve the public health, safety and welfare of the citizens of the City of North Port, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA, AS FOLLOWS:

SECTION 1- FINDINGS:

The City Commission hereby makes the following findings:

1.01. The recitals outlined above are incorporated by reference as findings of fact as if expressly set forth herein.

1.02. The Commission has held public hearings on the proposed amendments described herein in accordance with the requirements of the City of North Port Unified Land Development Code and has considered the information received at said public hearings.

1.03. The Commission has reviewed the proposed amendments provided herein and has found that the amendments are consistent with the City of North Port Comprehensive Plan.

SECTION 2 -ADOPTION:

2.01 The North Port City Commission hereby approves and adopts the following amendments to the City of North Port Unified Land Development Code:

“Chapter 14 – EARTHMOVING, DREDGE AND FILL REGULATIONS

Sec. 14-9. – Oil or natural gas exploration or production.

- A. No person or entity may engage in any oil or natural gas exploration or production that utilizes well stimulation within the boundaries of the City of North Port.
- B. No person or entity may engage in oil or natural gas exploration or production utilizing well stimulation techniques originating 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.

Sec. 14-~~9~~10. - Enforcement.

The provisions of Chapter 17, Code Enforcement, of the Code of the City of North Port and the enforcement procedures and penalties contained therein are hereby adopted and incorporated into and made a part hereof by reference.

Sec. 14-10~~1~~. - Interpretations.

Interpretations of this chapter shall be made by the designated Public Works Director or City Engineer or City Manager's designee.

Sec. 14-11~~2~~. - Conflicts.

Whenever the requirements of these earthmoving, dredge and fill regulations differ from those imposed by the Federal or State regulation, law or statute, the most restrictive regulation or the regulation imposing the higher standards shall apply.

Sec. 14-12~~3~~. - Appeals.

- A. Any person aggrieved by the designated Public Works Director/City Engineer/City Manager designee's interpretation may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation renders the property without reasonable use. The granting of any appeal shall not be in conflict with State law. Applications for an appeal shall be filed pursuant to Sec. 1-10 and Sec. 1-28.

Sec. 14-13~~4~~. - Severability.

If any section, subsection, phrase or portion of this chapter is for any reason held invalid or unconstitutional 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 thereof.

Sec. 14-14~~5~~. – Sec. 14-16. Reserved.

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ARTICLE V. – DEFINITIONS

Sec. 14-22. – Scope.

Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.

Sec. 14-23. – Terms not defined.

Where terms are not defined in this ordinance, such terms shall have ordinarily accepted meanings such as the context implies.

Exploration. The process of trying to find accumulations of oil and natural gas trapped under the earth's surface.

Natural gas. Any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains the gaseous or rarefied state at standard temperature or pressure conditions.

Production. The phase that occurs after successful exploration and development and during which hydrocarbons are drained from an oil or gas field.

Well stimulation. 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 the following treatments applied to oil or gas wells:

- (A) Hydraulic fracturing or fracking. Any type of well stimulation treatment that involves a high-pressure injection of hydraulic fracturing fluids containing a mix of water and/or sand and/or chemicals into underground geological formations.
- (B) Acid well stimulation treatment or acidizing. Any type of well stimulation treatment that uses, in whole or in part, the application or injection of one or more acids into a well or underground geological formation to enhance production of oil and/or gas.

SECTION 3 – CONFLICTS:

3.01 In the event of any conflict between the provisions of this Ordinance and any other Ordinance or portions thereof, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 4 – SEVERABILITY:

4.01 If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such

provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5 – CODING OF AMENDMENTS:

5.01 In this Ordinance, additions are shown as underlined and deletions as strikethrough. These editorial notations shall not appear in the codified text.

SECTION 6 – SAVINGS CLAUSE:

6.01 The City of North Port Unified Land Development Code, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

SECTION 7 – EFFECTIVE DATE:

7.01 This Ordinance shall take effect immediately after adoption by the City of North Port City Commission. No development order or development permits dependent on this Ordinance may be issued nor may development commence before it has become effective.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida in public session this _____ day of _____, 2017.

PASSED and DULY ADOPTED by the City Commission of the City of North Port, on the second and final reading in public session this _____ day of _____, 2017.

CITY OF NORTH PORT, FLORIDA

LINDA M. YATES
MAYOR

ATTEST:

PATSY C. ADKINS, MMC
CITY CLERK

APPROVED AS TO FORM AND
CORRECTNESS:

MARK MORIARTY
CITY ATTORNEY