



Legislation Text

File #: 18-759, **Version:** 1

TO: Planning and Zoning Advisory Board

FROM: Nicole Galehouse, AICP, Interim Planning Manager

SUBJECT: Ordinance 2018-40, Petition No. TXT-18-165, Prohibition on Phosphate Mining

Recommended Action

Recommend that the City Commission APPROVE Ordinance 2018-40.

General Information

At the April 6, 2017 regular Commission meeting, a presentation was made on the proposed mines in DeSoto County and their potential effects on the Big Slough watershed, which is a major water source within the City of North Port. Following this presentation, Commission directed staff to create an ordinance that would prohibit phosphate mining within the City of North Port.

Ordinance 2018-40 as presented adds phosphate mining to the list of prohibited uses that is created in Ordinance 2018-43 (prohibiting well stimulation (fracking) for oil and natural gas extraction). This is part of Chapter 14 of the ULDC, Earthmoving, Dredging and Fill Regulations. Definitions have been added to Article V of Chapter 14, which was also created with Ordinance 2018-43. Please note: if Ordinance 2018-43 is not approved or is amended, Ordinance 2018-40 will need to be revised and potentially readvertised.

Initial research in developing a phosphate mining prohibition raised some concern regarding the City's ability to ban this activity. Upon further investigation, the City Attorney's office produced a memo that explained the potential legal implications of such an ordinance, discussing that there is no express preemption, but that there could be an implied preemption. It was also discussed that there may be potential impacts to property rights. The alternative would be to put in place an ordinance which regulates mining activities, which should not create the same legal concerns that an outright ban may raise. The only way to know definitively if there is an implied preemption on local prohibition of phosphate mining is to adopt an ordinance which bans it to test the issue.

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 2018-40 as to form and correctness.

Strategic Plan

Create and sustain a safe and healthy environment for residents and visitors of North Port. Promote the City's historical, cultural, and natural environment.

Financial Impact

N/A

Procurement

N/A

Attachments:

1. Ordinance 2018-40
2. Staff Report, TXT-18-165

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