

**CITY OF BONITA SPRINGS
ORDINANCE NO. 15 – 17**

**AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE,
CHAPTER 4, AMENDING 4-1380 RELATING TO REQUIRED
APPROVALS FOR EXCAVATION ACTIVITIES TO PROHIBIT WELL
STIMULATION; PROVIDING FOR CONFLICTS OF LAW,
SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION
IN CODE AND AN EFFECTIVE DATE.**

Whereas, Florida Statutes §377.24(5) requires that prior to 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, Bonita Springs has used its zoning authority to address all forms of excavation activities, including mining, water retention, and gas and oil exploration; and

Whereas, well stimulation means 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; and

Whereas, the Conservancy of Southwest Florida has worked with City staff in approaching how to best address well stimulation, considering that in accordance with the Florida Department of Environmental Protection map showing all oil and gas wells in the state of Florida, none are located within or near the boundaries of the City of Bonita Springs; and

Whereas, there are mineral rights reserved under many parcels of land within the boundaries of the City of Bonita Springs, and while the common exploration of oil and gas resources in underlying portions of the City is addressed by ordinance, well stimulation is not currently contemplated by LDC §4-1380; and

Whereas, sound zoning principles as articulated in the determination of whether or not to consent to gas and oil exploration by special exception approval include (1) compatibility with existing or planned uses, (2) performance and locational standards, (3) consistency with the goals, objectives, policies and intent of the Bonita Plan, (4) whether the use will protect, conserve or preserve environmentally critical areas and natural resources, (5) whether the use will cause damage, hazard, nuisance or other detriment to persons or property; and (6) whether the use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use as set forth in land development code chapter 4; and

Whereas, Bonita Springs City Council is cognizant of the Court's opinion in *Wallach v. Town of Dryden*, 23 N.Y.3d 728 (2014), holding that nothing obligates a town that "contains extractable minerals . . . to permit them to be mined somewhere within the municipality" or "to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police powers to prevent damage to the rights of others and to promote the interests of the community as a whole"; and

Whereas, in the case above the Court found that the Town of Dryden engaged in a reasonable exercise of their zoning authority when they adopted local laws clarifying that hydro-fracking was not a permissible use in any of the Town's zoning districts; and

Whereas, well stimulation using fracking chemicals is an industrial activity with impacts typically associated with heavy industrial uses including storage of fracking chemicals (including carcinogens and trade secret formulations); and

Whereas, well stimulation using fracking chemicals includes industrial water usage generating waste, flowback, chemical and requiring storage, transportation, processing and disposal of chemical wastes; and

Whereas, there are documented surface spills at well sites in Collier County, bordering the corporate boundaries of the City of Bonita Springs to its south; and

Whereas, well stimulation using fracking chemicals utilizes large tanker-truck and heavy industrial equipment, machinery and requires transportation of fuel to power the heavy industrial machinery at the well site; and

Whereas, heavy industrial activities associated with well stimulation using fracking chemicals operations occur 24 hours per day, seven days per week include lighting and noise, and can result in fugitive gas emissions, including release of un-flared hazardous gases to the ambient air; and

Whereas, these heavy industrial activities involve the storage, use, and disposal of additional chemicals, some of which are listed as Immediately Dangerous to Life or Health (IDLHs) by the by Center for Disease Control (CDC) including numerous chemicals contained in complex chemical formulations including trade secrets; and

Whereas, special equipment and training is needed to respond locally to oil well emergencies, spills and releases at oil and gas wells using fracking chemicals; and

Whereas, specialized emergency equipment and training is required to adequately respond to onsite emergency incidents and offsite collisions and vehicle accidents involving tanker trucks transporting dangerous chemicals, fuel, oil and waste to and from well sites, including the potential releases of toxic and dangerous gases (U.S. Dept of Health and Human Services Toxicological Profiles) as documented by MSDS sheets for complex trade secret chemical formulations; and

Whereas, there is limited local emergency response training and equipment and response time capabilities; and

Whereas, oil well stimulation using fracking chemicals is not a compatible use of land with surrounding residential, commercial, government/institutional and agricultural designated lands, or wildlife habitat and existing urban, suburban and agricultural landscapes in the City of Bonita Springs; and

Whereas, impacts associated with oil well stimulations using fracking chemicals have been documented in studies including the Chemical and Biological Risk Assessment for Natural Gas Extraction in New York, New York State Department of Health 2014 Public Health Report of High-Volume Hydraulic Fracturing for Shale Gas Development (http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf) and New York State Supplemental General Environmental Impact Statement (2015): (<http://www.dec.ny.gov/energy/75370.html>); and

Whereas, Bonita Springs City Council has determined to exercise its home rule powers and zoning authority to prohibit well stimulation to prevent detrimental impacts to the community and to promote the interests of the community as a whole.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: BONITA SPRINGS LAND DEVELOPMENT CODE
SECTION 4-1380

The City of Bonita Springs Land Development Code, Chapter 4, Article VI, Division 15, Section 4-1380 is hereby amended and replaced with new language underlined and deleted language cross-hatched, as follows:

DIVISION 15. - EXCAVATION ACTIVITIES

Subdivision I. - In General

Sec. 4-1380. - Required approvals.

(a) Excavation for mining purposes.

- (1) No stripping, grading, excavating or removal by any process of natural deposits of solid minerals from their natural location or state for use off of the premises may be commenced prior to applying for and receiving approval as a special exception in the AG districts or as a permissible use in a planned development district as set forth in Tables 4-436 and 4-740. A certificate to dig must be obtained prior to granting approval to excavate properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to chapter 5.
- (2) Excavations for construction of roads, drainageways, buildings or similar activities that have received a development order or building permit where no material is removed from the premises, except surplus not required for backfill or grading are excluded from the requirements of this subsection.

(b) Excavations for purpose of water retention. No manmade water detention or retention body may be commenced prior to receiving approval in accordance with the provisions of chapter 3. A certificate to

dig must be obtained prior to approval to excavate properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to chapter 5.

- (c) Excavations for purpose of oil or gas exploration.
- (1) No oil or gas exploration wells or test wells may be commenced prior to application for and approval of a special exception in accordance with the procedures set forth in article II of this chapter. A certificate to dig must be obtained prior to granting approval to excavate properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to chapter 5.
 - (2) No oil or gas exploration wells may be used for or converted to production wells prior to application for and approval of another special exception in accordance with the procedures set forth in article II of this chapter.
 - (3) No person or entity may engage in any oil and gas exploration or production that utilizes well stimulation within the corporate boundaries of the City of Bonita Springs or, consistent with Florida Statutes §377.24(6), within the tidal waters of the state abutting or immediately adjacent to the corporate limits of the municipality, or within three miles of the City's corporate limits extending from the line of the mean high tide. As used in this section, the term "well stimulation" shall mean a well intervention, exploration, operation, or maintenance procedure performed by injecting any fluid into a rock formation in order to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. Well stimulation does not include routine well cleaning that does not affect the integrity of the well or the formation.

(Ord. No. 11-02, § 3(4-1651), 1-19-2011)

SECTION TWO: SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion of the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision application.

SECTION THREE: CODIFICATION, INCLUSION IN CODE & SCRIVENER'S ERRORS

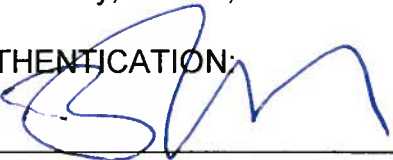
It is the intention of the City Council for the City of Bonita Springs that the provisions of this Ordinance shall become and be made part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not effect the intent may be authorized by the City Manager, or the City Manager's designee, without need or public hearing, by filing a corrected or recodified copy of same with the City Clerk.

SECTION FOUR: EFFECTIVE DATE

The effective date of this ordinance shall be thirty (30) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 15th day of July, 2015.

AUTHENTICATION:




Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

Nelson	Aye	Simmons	Aye
McIntosh	Aye	Gibson	Aye
Martin	Aye	Lonkart	Aye
Slachta	Absent		

Date filed with City Clerk: 7/16/15