

ORDINANCE NO. 2016-04

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PROHIBITING ANY OIL AND GAS EXPLORATION THAT USES WELL STIMULATION WITHIN THE BOUNDARIES OF BREVARD COUNTY, FLORIDA; CREATING CHAPTER 46, ARTICLE IX. OIL AND GAS WELL STIMULATION PROHIBITED; CREATING SEC. 46-375 PURPOSE AND SCOPE; CREATING SEC. 46-376 DEFINITIONS; CREATING SEC. 46-377 WELL STIMULATION PROHIBITED; CREATING SEC. 46-378 ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR AREA ENCOMPASSED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board seeks to protect the water resources of Brevard County from potential contamination by carcinogenic chemicals; and

WHEREAS, oil and gas well stimulation, including hydraulic fracturing, acidizing and acid fracturing, is performed by injecting fluid into a rock formation in order to increase production at an oil or gas well; 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, 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,

OFFICIALLY FILED WITH THE SECRETARY OF STATE ON 5/4/16

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the National Environmental Protection Act; and

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

WHEREAS, Florida's oil and gas regulations, Chapter 377, Florida Statutes, and Rules 62C-25 through 62C-30, Florida Administrative Code, make no reference to hydraulic fracturing or other well stimulation techniques; and

WHEREAS, fracking requires the use of hundreds of thousands to millions of gallons of water for each fracking event, and Florida Water Management Districts have declared an insufficient water supply for growth in the Central Florida region; and

WHEREAS, the residents of Brevard County 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 March 1, 2016, the Board adopted Resolution 2016-024 urging the Florida Legislature to not enact laws preempting local authority to regulate oil and gas exploration practices, including hydraulic fracking and well stimulation; urging the Florida Legislature to enact a moratorium on the use of hydraulic fracking and well stimulation until scientific study and evaluation proves that they do not pose a significant and harmful risk to water supplies or to public health, safety or the environment; and urging the U.S. Environmental Protection Agency to intervene should the Florida Legislature fail to enact legislation that protects Florida residents and the environment from the harms associated with hydraulic fracking and well stimulation; and

WHEREAS, the Board has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

SECTION 1. Chapter 46, Article IX. Oil and Gas Well Stimulation Prohibited. is hereby created.

SECTION 2. Chapter 46, Article IX, Sec. 46-375. Purpose and scope, is hereby created as follows:

Sec. 46-375. Purpose and scope.

It is the purpose and intent of the Board to prohibit all oil and gas well stimulation activities within the boundaries of Brevard County, Florida.

SECTION 3. Chapter 46, Article IX, Sec. 46-376 Definitions, is hereby created as follows:

Sec. 46-376. Definitions.

The following words, terms, and phrases shall apply in the application, interpretation and enforcement of this Division:

Hydraulic fracturing means the process by which fractures in the earth's subsurface are widened by injection of water, chemicals, or both, under high pressure used in the extraction of oil and gas.

Matrix stimulation means the injection of any acid into a well to break up impediments without fracturing the well.

Well stimulation means any process of using vast amounts of water, chemicals, or both, injected into the ground as a means of oil and gas exploration, including but not limited to hydraulic fracturing and matrix stimulation. Well stimulation does not include routine well cleaning that does not affect the integrity of the well or formation.

SECTION 4. Chapter 46, Article IX, Sec. 46-377, Well stimulation prohibited, is hereby created as follows:

Sec. 46-377. Well stimulation prohibited.

(a) No person or entity may engage in any oil and gas exploration or production that utilizes well stimulation within the boundaries of Brevard County, Florida.

(b) No person or entity may engage in oil or gas exploration or production utilizing well stimulation techniques originating outside of the boundaries of Brevard County, Florida that in any way enters onto, into, or under the ground within the boundaries of Brevard County.

SECTION 5. Chapter 46, Article IX, Sec. 46-378 Enforcement, is hereby created as follows:

Sec. 46-378. Enforcement.

The Brevard County Attorney's Office, or special counsel as otherwise authorized, is authorized to pursue temporary or permanent injunctive relief or any other legal or equitable remedy authorized by law in courts of competent jurisdiction to cure, remove or end any activity which violates this Division.

Section 6. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

Section 7. Inclusion in Code. It is intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida, and that the sections of this

ordinances 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 intentions.


Section 8. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code or regulation, the more restrictive shall apply.

Section 9. Area Encompassed. This ordinance shall take effect throughout the incorporated and the unincorporated areas of Brevard County, Florida.

Section 10. Effective Date. This ordinance shall take effect upon adoption and filing as required by law. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

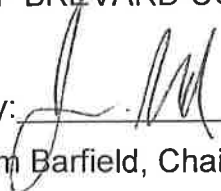
DONE, ORDERED AND ADOPTED, in regular session, this 3rd day of May, 2016.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Jim Barfield, Chairman

As approved by the Board on May 3, 2016



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

March 2, 2016

M E M O R A N D U M

TO: Stockton Whitten, County Manager

RE: Item VI.F.1., Citizen Request by League of Women Voters of the Space Coast for Senate Bill 318, Pro-Fracking in Florida

The Board of County Commissioners, in regular session on March 1, 2016, adopted Resolution No. 16-024, opposing Senate Bill 318, Pro-Fracking in Florida; approved legislative intent for ordinance prohibiting any oil and gas exploration that uses well stimulation within the boundaries of Brevard County; and authorized placing the advertisement for legislative intent to be held on March 15, 2016. Enclosed is a certified copy of the Resolution for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: County Attorney
Finance

RESOLUTION No. 16-024

[BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS – (1) OPPOSING PROPOSED FLORIDA LEGISLATION PREEMPTING OR VOIDING LOCAL GOVERNMENT REGULATIONS ON HYDRAULIC FRACTURING, ACID FRACTURING AND WELL STIMULATION TREATMENTS PURFORMED FOR THE PURPOSE OF EXPLORATION OR PRODUCTION OF OIL OR NATURAL GAS; AND (2) URGING THE PASSAGE OF A MORITORIUM ON HYDRAULIC FRACTURING, ACID FRACTURING AND WELL STIMULATION TREATMENTS IN FLORIDA .]

WHEREAS, oil and gas well stimulation, including hydraulic fracturing, acidizing and acid fracturing, is performed by injecting chemical fluids into rock formations, to create fractures, in order to explore for, or produce and recover, oil and gas; and

WHEREAS, oil and gas stimulations involve the use of hundreds of chemicals some of which have been determined by the U.S. Center for Disease Control to be carcinogenic or which could otherwise pose a significant and harmful risk to water supplies or to public health, safety or the environment; and

WHEREAS, the Florida Legislature is currently considering legislation (including Senate Bill 318 and House Bill 191) permitting and regulating oil and gas well stimulation, including hydraulic fracturing and acid fracturing; and

WHEREAS, current versions of such proposed legislation would preempt counties, municipalities and other political subdivisions from regulating any activity related to oil and gas exploration, development, production, processing, storage and transportation; and

WHEREAS, current versions of such proposed legislation would also void any existing county or other ordinance related to such matters; and

WHEREAS, preemption by the state is in opposition to the philosophy of self-government observed by the many and diverse Florida communities; and

WHEREAS, Brevard County residents have a reasonable expectation that their local governments will be able to act to protect their water supplies and their health, safety and environment; and

WHEREAS, Brevard County residents must depend upon all of their local, state and federal governments to ensure that they live in a safe environment and to protect the public's health; and

WHEREAS, the Brevard County Commission and its constituents will almost certainly have to bear some, or all, of the costs of future environmental and health problems resulting from the injection of the water and chemicals used in the processes of oil and gas well stimulation, including hydraulic fracturing and acid fracturing;

NOW, THEREFORE, BE IT RESOVED THAT THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, DOES HEREBY:

1. Urge the Florida Legislature not to enact any legislation that would preempt local governments' ability to impose, by ordinance or other means, regulation of the exploration, development, production, processing, storage and transportation of oil and gas within their respective borders, including such matters relating to the processes of hydraulic fracturing, acid fracturing and well stimulation.

2. Urge the Florida Legislature not to enact any legislation that would void any existing local government ordinance or other action that is intended to accomplish the regulation described in paragraph numbered 1. above.

3. Urge the Florida Legislature to (a) declare an immediate moratorium on the use of the processes of hydraulic fracturing, acid fracturing and well stimulation, and (b) ban these processes in Florida until further scientific study and evaluation establishes that they do not pose a significant and harmful risk to water supplies or to public health, safety or the environment.

4. Urge the U.S. Environmental Protection Agency, if the Florida Legislature fails to enact legislation that (a) protects all Florida residents from the dangers of various forms of hydraulic fracturing, acid fracturing and well stimulation and (b) preserves the right of local governments in Florida to protect the health, safety and environments of their residents, to adopt and enforce rules and regulations that ensure that all Florida residents' are protected from any harm from any form of hydraulic fracturing, acid fracturing or well stimulation.

DONE, ORDERED AND ADOPTED, in regular session, this 1st day of MARCH, A.D., 2016.


BREVARD COUNTY, FLORIDA

By: BOARD OF COUNTY COMMISSIONERS

By: 
JIM BARFIELD, CHAIRMAN

Approved by the Board: 3/1/16

ATTEST:


Scott Ellis, Clerk