



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

10A1

Dylan Reingold, County Attorney  
William K. DeBraal, Deputy County Attorney  
Kate Pingolt Cotner, Assistant County Attorney

**MEMORANDUM**

**TO:** Board of County Commissioners  
**FROM:** Dylan Reingold, County Attorney  
**DATE:** October 25, 2016 *[Signature]*  
**SUBJECT:** Fracking Ordinance

**BACKGROUND.**

On October 18, 2016, the Indian River County Board of County Commissioners (the "Board") authorized the County Attorney's Office to draft an ordinance prohibiting fracking, hydraulic fracturing and any other related processes in Indian River County. Pursuant to the Board's direction, and after examining various ordinances and resolutions from other local governments across the State of Florida, including Seminole, Citrus, Pinellas, Brevard, Broward and Miami-Dade Counties, the County Attorney's Office has drafted the attached proposed ordinance.

The attached proposed ordinance creates a new Chapter 317 of the Indian River County Code of Ordinances, titled Oil and Gas Well Stimulation Prohibited. The proposed ordinance defines several terms including acid fracturing, cyclic steam injection, hydraulic fracturing, matrix stimulation and well stimulation. The proposed ordinance then prohibits these various activities within Indian River County. The proposed ordinance authorizes the County Attorney, or special counsel, to pursue injunctive relief or any other remedies to cure, remove or end any such activities.

*APPROVED FOR NOVEMBER 15, 2016  
B.C.C. MEETING - PUBLIC HEARINGS*

*COUNTY ATTORNEY*

Indian River Co.	Approved	Date
Admin	<i>[Signature]</i>	11/9/16
Co. Atty.	<i>[Signature]</i>	10/31/16
Budget	<i>[Signature]</i>	11-7-16
Dept.	<i>[Signature]</i>	11-1-16
Risk Mgr.	---	---

Additionally, the proposed ordinance includes a provision that whenever a violation occurs, any person who has a legal, beneficial or equitable interest in the facility or instrumentality contributing to the violation, or who has a legal, beneficial or equitable interest in real property upon which such violation occurs, that such person will be jointly and severally liable for such violation.

**FUNDING.**

The only cost associated with this matter is the cost of advertising the notice of public hearing. The cost was \$136.67. This cost was funded from General Fund/County Attorney/Legal Account No. 00110214-033110.

**RECOMMENDATION.**

The County Attorney's Office respectfully requests that the chair open the public hearing and take any comments from the public and then have the Board vote whether to approve the proposed ordinance.

**ATTACHMENTS**

Proposed Ordinance

ORDINANCE NO. 2016-\_\_\_\_\_

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, CREATING CHAPTER 317 OF THE CODE OF INDIAN RIVER COUNTY, FLORIDA, ENTITLED “OIL AND GAS WELL STIMULATION PROHIBITED”; PROHIBITING OIL AND GAS WELL STIMULATION; AND PROVIDING FOR CODIFICATION, SEVERABILITY, A GENERAL REPEALER AND AN EFFECTIVE DATE.**

**WHEREAS**, clean water is fundamental to the health of Florida’s environment, economy and its citizens; and

**WHEREAS**, the public utilities in Indian River County rely on water from the Upper Floridan Aquifer for potable water supplies; and

**WHEREAS**, the Indian River County Board of County Commissioners seeks to protect the water resources of Indian River County from potential contamination by carcinogenic chemicals; and

**WHEREAS**, oil and gas well stimulation including, but not limited to, hydraulic fracturing, matrix stimulation, acid fracturing (a.k.a. “acidizing”) and cyclic steam injection, 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 compounds, some of which are determined by the Center for Disease Control and Prevention to be carcinogenic or which could otherwise pose a widespread and significant risk to public health, safety, and the environment; and

**WHEREAS**, the oil and gas industry is not required by federal or state law to publicly disclose chemical formulas or well stimulation and fracturing fluids; and

**WHEREAS**, in both the 2015-2016 and 2016-2017 Florida State Legislative Sessions the Florida Legislature considered legislation which would have required a peer review study to be performed by the Florida Department of Environmental Protection, which would have: i) evaluated geologic features; ii) evaluated potential hazards and risks, and potential for groundwater contamination; and iii) reviewed and evaluated potential for reclaimed water use and the ultimate disposition of waste fluids;

**WHEREAS**, the legislation would have prohibited permitting activities during both rulemaking and peer review study processes; and

**WHEREAS**, the Florida Legislature did not pass the proposed legislation, thus leaving the citizens of Florida without the critical knowledge of the peer review study nor the prohibition of such activities during such process; and

**WHEREAS**, the residents of Indian River County have a reasonable expectation that their local governments will endeavor to protect their health, safety and welfare; and

**WHEREAS**, the Indian River County Board of County Commissioners has determined to exercise its home rule powers and authority to prohibit well stimulation and therefore prohibit potential detrimental impacts to the community through contamination of critical water supplies;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:**

**Section 1. Enactment Authority.**

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Board specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

**Section 2. Legislative Findings.**

The Board finds that the "Whereas" clauses above are true and correct, and hereby incorporates such clauses as the legislative findings of the Board.

**Section 3. Creation of New Chapter.**

Chapter 317 of the Code of Indian River County, Florida is hereby created to read as follows:

**CHAPTER 317. OIL AND GAS WELL STIMULATION PROHIBITED**

Sec. 317.01. - 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 the County.

Sec. 317.02. - Definitions.

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

*Acid fracturing* (a.k.a. acidizing) shall mean pumping acidic fluids into a well at a pressure that fractures the rock.

*Cyclic steam injection* shall mean all stages of thermal method which involves injecting a well with steam with the purpose of heating the reservoir near the wellbore.

*Exploration* shall mean geologic or geophysical activities related to the search for oil, natural gas or other subsurface hydrocarbons.

*Hydraulic fracturing* shall mean 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* shall mean the injection of any acid or solvent into a well to break up impediments without fracturing the well.

*Well stimulation* shall mean 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, acid fracturing, cyclic steam injection and matrix stimulation. Well stimulation does not include routine well cleaning that does not affect the integrity of the well or formation.

Sec. 317.03. - Prohibited Activities.

- (a) No person or entity may engage in any oil and gas well stimulation that shall cause, suffer, permit or allow the use of any form of well stimulation including, but not limited to, hydraulic fracturing, matrix stimulation, acid fracturing, or cyclic steam injection within the boundaries of the County.
- (b) No person or entity may engage in oil or gas well stimulation techniques originating outside of the boundaries of the County that in any way enters onto, into, or under the ground within the boundaries of the County.

Sec. 317.04. - Enforcement.

The County Attorney, 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 chapter.

Sec 317.05. – Liability for violation.

Whenever a violation of this chapter occurs or exists, or has occurred or existed, any person, individually or otherwise, who has a legal, beneficial or equitable interest in the facility or instrumentality causing or contributing to the violation, or who has a legal, beneficial or equitable interest in real property upon which such violation occurs or exists, or has occurred or existed, shall be jointly and severally liable for such violation. This provision shall be construed to impose joint and several liability upon all persons, individually or otherwise, who, although such persons may no longer have any such legal, beneficial or equitable interest in such facility or instrumentality or real property, did have such an interest at any time during which such violation existed or occurred or continued to exist or to occur.

**Section 4. Codification.** It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County

Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

**Section 5. Severability.** If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

**Section 6. Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 7. Effective Date.** This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the 2nd day of November, 2016, for a public hearing to be held on the 15 day of November, 2016, at which time it was moved for adoption by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted by the following vote:

Chairman Bob Solari	_____
Vice-Chairman Joseph E. Flescher	_____
Commissioner Wesley S. Davis	_____
Commissioner Tim Zorc	_____
Commissioner Peter D. O'Bryan	_____

The Chairman thereupon declared the ordinance duly passed and adopted this \_\_\_\_\_ day of November, 2016.

**BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA**

By: \_\_\_\_\_  
Bob Solari, Chairman

**ATTEST: Jeffrey R. Smith, Clerk and Comptroller**

By: \_\_\_\_\_  
Deputy Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

BY \_\_\_\_\_  
**DYLAN REINGOLD  
COUNTY ATTORNEY**

**EFFECTIVE DATE:** This Ordinance was filed with the Department of State on the \_\_\_\_\_ day of November, 2016.