

ORDINANCE NO. 16-37

AN ORDINANCE OF THE COUNTY OF PINELLAS, PROVIDING THAT THE PINELLAS COUNTY CODE BE AMENDED BY ADDING ARTICLE XIV. (“OIL AND GAS WELL STIMULATION”) TO CHAPTER 58 (“ENVIRONMENT”); PROVIDING THAT WELL STIMULATION ACTIVITIES INCLUDING BUT NOT LIMITED TO HYDRAULIC FRACTURING, ACID FRACTURING, AND MATRIX ACIDIZING BE PROHIBITED COUNTYWIDE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Pinellas County Board of County Commissioners (the “Board”) has demonstrated a lasting commitment to protection of the health of its residents and visitors; and

WHEREAS, the Board has likewise demonstrated a lasting commitment to protection of the environment with a strong focus on water resources such as the Floridan Aquifer; and

WHEREAS, Pinellas County is the most densely populated county in the State, making its residents and visitors exceptionally susceptible to harm from damage to the local environment; and

WHEREAS, hydraulic fracturing, acid fracturing, and matrix acidizing (together commonly referred to as “Well Stimulation” or “Fracking”), are increasingly being used across the country to collect oil and gas by injecting fluids into underground rock formations; and

WHEREAS, Well Stimulation became a focal point of concern in Florida in January 2014, after a Texas drilling company, the Dan A. Hughes Company, was found performing Well Stimulation at an oil well permitted by the Florida Department of Environmental Protection (“FDEP”) in Collier County (the “Collier Hogan Well”), which led to a highly-publicized legal dispute involving Collier County, FDEP, and the Dan A. Hughes Company; and

WHEREAS, although an FDEP permit is required for drilling oil and gas wells, no separate FDEP permit is required for Well Stimulation; and

WHEREAS, following the aforementioned legal conflict over the Collier Hogan Well, which ultimately resulted in the Dan A. Hughes Company shutting down the Collier Hogan Well, the Florida Legislature considered adopting a bill in March 2016, HB 191/SB 318, which outlined a state regulatory scheme for Well Stimulation and preempted local governments from regulating Well Stimulation with narrow exceptions; and

WHEREAS, following the aforementioned legal conflict over the Collier Hogan Well, Brevard, Broward, Seminole, Volusia, and Wakulla counties adopted ordinances banning Well

Stimulation, and many other local governments passed resolutions opposing HB 191/SB 318 and/or supporting legislation banning Well Stimulation statewide; and

WHEREAS, as evidenced in the administrative complaint filed in November 2013, by Naples residents against FDEP and the Dan A. Hughes Company challenging issuance of a separate oil well permit in Collier County, Well Stimulation involves drilling and ancillary activities that create a nuisance to surrounding property owners; and

WHEREAS, the Environmental Protection Agency (“EPA”) released a draft assessment in June 2015, detailing how Well Stimulation adversely impacts the quality of groundwater through liquid and gas leakage from wells with inadequate casing and cementing, as well as the quantity of groundwater through heavy water usage in fluid injection; and

WHEREAS, the quality the County’s surface waters may be contaminated through Well Stimulation development, storage and transportation activities, subjecting the County to liability under the Clean Water Act; and

WHEREAS, EPA, to mitigate the air pollution caused by Well Stimulation, issued New Source Performance Standards (“NSPS”) for Volatile Organic Compounds emitted from Well Stimulation in April 2012, and proposed NSPS for methane emitted from Well Stimulation in September 2015; and

WHEREAS, Well Stimulation produces wastewater containing numerous toxic chemicals, some of which may be hazardous and trigger liability under the Comprehensive Environmental Response, Compensation, and Liability Act; and

WHEREAS, EPA, to address the risk of toxic wastewater produced from Well Stimulation, proposed a rule in April 2015, prohibiting the disposal of Well Stimulation wastewater at “Publicly Owned Treatment Works,” which include the County’s two water reclamation facilities; and

WHEREAS, if EPA’s proposed wastewater rule becomes law and Well Stimulation in the County proceeds, underground injection of wastewater could be the most feasible disposal option in the County, which may lead to unforeseeable spatial burdens and seismic activity; and

WHEREAS, if EPA’s proposed wastewater rule does not become law and Well Stimulation in the County proceeds, and, if underground injection or offsite storage of wastewater are infeasible disposal options, the County’s two water reclamation facilities would face numerous challenges in receiving and treating wastewater; and

WHEREAS, the Board finds that Well Stimulation could irreparably harm the Floridan Aquifer, which is not only the primary source of water for domestic, agricultural, and industrial use in Pinellas County, but surrounding counties as well; and

WHEREAS, the Board finds that Well Stimulation constitutes a nuisance and poses long-term direct, cumulative, and secondary environmental impacts that endanger the health, safety, and welfare of the public; and

WHEREAS, the County's Comprehensive Plan outlines the commitment to effective management and protection of the Pinellas County and Boca Ciega Bay Aquatic Preserves as established by special act of the legislature.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pinellas County, Florida that:

SECTION 1. Chapter 58 ("Environment") of the Pinellas County Code is hereby amended by adding Article XIV. as follows:

Article XIV. Oil and Gas Well Stimulation

Sec. 58-486: Definitions.

Acid Fracturing means pumping acidic fluids into a well at a pressure that fractures the rock.

Board means the Board of County Commissioners of Pinellas County.

Code means the Pinellas County Code.

County means Pinellas County.

Hydraulic Fracturing means pumping fluids composed of water, chemicals, or both into a well at a pressure that fractures the rock.

Person includes any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, or public officer or any other entity whatsoever, or any combination of such, jointly or severally.

Matrix Acidizing means pumping acid into a well at a pressure that does not exceed the fracture gradient to dissolve some of the rock to bypass wellbore damage or stimulate carbonate formations.

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 by improving the flow of hydrocarbons from the formation into the wellbore. Well Stimulation includes but is not limited to Hydraulic Fracturing, Acid Fracturing, and Matrix Acidizing. Well Stimulation does not include routine well cleaning that does not affect the integrity of the well or the formation.

Sec. 58-487: Legislative Findings.

The Board finds that the practice of Well Stimulation in the exploration and production of oil and gas presents significant health risks to the public and environment. Most notably, Well Stimulation could compromise the quality of the County's groundwater supply, which is drawn from the Floridian Aquifer. The Floridian Aquifer is composed of highly-permeable limestone formations particularly vulnerable to liquid and gas migrations caused by Well Stimulation. In addition to groundwater contamination, Well Stimulation may cause water supply loss, surface water impairment, air pollution, and hazardous wastewater production, all of which adversely impact the environment and the public's reliance and enjoyment thereof. These impacts are exacerbated by the County's dense population.

The Board further finds that banning Well Stimulation comports with the County's Comprehensive Plan. In particular, banning Well Stimulation advances the following goals of the Comprehensive Plan's Natural Resource Conservation & Management Element:

- *Goal One:* Protect and Manage the Functional Integrity of the County's Geologic Features and Attributes, and its Natural Groundwater Aquifer Recharge Areas and Wellfields, in a Manner that Preserves and Enhances Natural Functions, and Protects Groundwater Quality;
- *Goal Two:* Pinellas County will Conserve, Protect, Restore, and Appropriately Manage its Natural Systems and Living Resources to Ensure the Highest Environmental Quality Possible;
- *Goal Four:* Pinellas County will Remain a Leader in the Protection and Restoration of its Surface Waters and the Dependent Habitats and Resources which are Essential to this County's Character, Economy, and Quality of Life;
- *Goal Seven:* Pinellas County will be a Leader in Environmentally Sustainable Government Operations, a Proponent of Smart and Sustainable Growth Management Practices, and will have a Strong Economy Supported by Sound Environmental Principals, Programs, and Practices;
- *Goal Eight:* Pinellas County Ambient Air Quality will Meet or Surpass all State and Federal Standards for Regulated Air Pollutants to Ensure a Healthy Environment for its Citizens; and
- *Goal Nine:* Pinellas County shall Improve Management of Non-Criteria Air Pollutants such as Hazardous and Toxic Substances.

Sec. 58-488: Legislative Intent.

This Article is adopted for the purpose of protecting the health, safety, and welfare of the public and environment and shall be liberally construed to accomplish such ends. This Article is intended

to fully prohibit Well Stimulation in the exploration and production of oil and gas within the County.

Sec. 58-489: Well Stimulation Prohibited.

- (a) No Person shall engage in any oil or gas exploration or production that utilizes Well Stimulation within the boundaries of the County.
- (b) No Person shall engage in any oil or gas exploration or production utilizing Well Stimulation originating outside the boundaries of the County that in any way enters onto, into, or under the ground within the boundaries of the County.

Sec. 58-490: Administration of Article.

The County's Public Works Department, as may be renamed or reorganized from time to time, is hereby designated as the County agency responsible for administration and enforcement of this Article.

Sec. 58-491: Areas Embraced.

All territories within the legal boundaries of the County, including all incorporated and unincorporated areas, shall be embraced by the provisions of this Article unless in conflict with or specifically deleted by a municipal ordinance.

Sec. 58-492: Enforcement and Penalty.

Violations of this Article may be enforced as provided for in Section 1-8 ("General Penalty; Continuing Violations") of the Code or Chapter 2, Article VIII ("Code Enforcement by Special Magistrates") of the Code. Nothing herein prevents the Board from availing itself of any other legal and equitable remedies provided by law, including but not limited to:

- (a) Seeking injunctive relief to cleanup or prevent a violation;
- (b) Abating a violation and seeking full reimbursement and costs for any phase of abatement, including but not limited to site assessment, remediation, and removal; and
- (c) Seeking penalties under the County Environmental Enforcement Act, codified at Chapter 58, Article II of the Code, of an amount not more than \$10,000 for each offense, where each day during any portion of which such violation occurs constitutes a separate offense.

Sec. 58-495: Liability for Violation of Article.

Whenever a violation of this Article 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 2. SEVERABILITY. 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 holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 3. CODIFICATION. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to section, article, or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 4. EFFECTIVE DATE. Pursuant to Section 125.66 of the Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the Ordinance with the Department of State.

APPROVED AS TO FORM



Office of the County Attorney