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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2015 - 19

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AMENDING CHAPTER 34, ZONING, ARTICLE VII, SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 15, EXCAVATION ACTIVITIES, OF VILLAGE OF ESTERO LAND DEVELOPMENT CODE TO LIMIT CERTAIN EXCAVATION ACTIVITIES RELATING TO WELL STIMULATION INCLUDING ACID STIMULTAION AND HYDRAULIC OR ACID FRACTURING; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 377.24, Florida Statutes, requires the approval of the local governing body prior to the issuance of any permit to establish an oil or natural gas well; and

WHEREAS, Florida’s oil and gas regulations, Chapter 377, Florida Statues, makes no reference to well stimulation treatments including acid stimulation, hydraulic fracturing or acid fracturing; and

WHEREAS, the Village of Estero currently regulates oil and gas exploration as a resource extracting activity as provided by the Land Development Code but requires further modification to adequately address; and

WHEREAS, hydraulic fracturing utilizes vast amounts of water as a means of oil and gas exploration, thereby depriving the natural environment, residents and visitors of Florida of a valuable and increasingly scarce resource; and

WHEREAS, well stimulation treatments may involve the use of chemicals, some of which are known to be carcinogenic or otherwise harmful to human health; and

WHEREAS, exposure to the chemicals used in well stimulation treatments may pose a widespread and significant risk to public health and safety and the environment; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the Village Council has all powers of self-government not inconsistent with general or special law, including the power and authority to adopt ordinances providing for the public health, safety and welfare of the residents of the Village of Estero; and

45 **WHEREAS**, the Council has determined that the use of well stimulation as a means of
46 oil and gas extraction is incompatible with the Estero Comprehensive Plan, the existing and
47 planned uses within the Village, and public health, safety and welfare of the community.
48

49 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
50 Florida:

51
52 **Section 1.** The forgoing recitals are true and correct and are incorporated herein by
53 this reference.
54

55 **Section 2.** Chapter 34 Zoning, Article VII Supplementary District Regulations,
56 Division 15 Excavation Activities, is hereby amended as follows: Sec. 34-1651. – General
57 requirements for all excavation activities.

58 (a) Certified to dig. A certificate to dig must be obtained prior to receiving approval to
59 excavate properties located within Level 1 or Level 2 zones of archaeological
60 sensitivity pursuant to chapter 22.

61 (b) Mining. Mining (def) activities may be permitted in accordance with chapter 12.

62 (c) Driving or sinking of wells for purpose of oil or gas exploration or extraction.

63 (1) No oil or gas exploration wells or test wells may be commenced prior to
64 obtaining a special exception for gas and oil exploration in accordance with the
65 procedures set forth in article II of this chapter.

66 (2) No oil or gas exploration wells may be used for or converted to production wells
67 prior to obtaining a special exception for gas and oil extraction in accordance
68 with the procedures set forth in article II of this chapter.

69 (3) No person or entity may engage in any oil and gas exploration or production
70 that utilizes well stimulation within the corporate boundaries of the Village of
71 Estero or, consistent with Florida Statutes §377.24(6), within the tidal waters of
72 the state abutting or immediately adjacent to the corporate limits of the
73 municipality, or within three miles of the Village’s corporate limits extending
74 from the line of the mean high tide. As used in this section, the term “well
75 stimulation” shall mean a well intervention, exploration, operation, or
76 maintenance procedure performed by injecting fluid into a rock formation in
77 order to increase production at an oil or gas well by improving the flow of
78 hydrocarbons from the formation into the wellbore. Well stimulation does not
79 include routine well cleaning that does not affect the integrity of the well or the
80 formation.

81 (d) Excavations for purpose of water retention or other land development. No excavation
82 activities, including removal of surplus material may be commenced prior to receiving
83 approval in accordance with the provisions of section 10-329 or chapter 12, as
84 applicable.
85

86 **Section 3.** Codification. The Village Council intends that this Ordinance be made
87 part of the Code of Laws and Ordinances of the Village of Estero, Florida; and that sections of
88 this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to
89 accomplish codification, and regardless of whether this Ordinance is ever codified, the

90 Ordinance can be renumbered or re-lettered and typographical errors and clarifications of
91 ambiguous wording that do not affect the intent can be corrected with the authorization of the
92 Village Manager without the need for a public hearing.

93
94 **Section 4.** Conflict with other Ordinances. The provisions of this article shall
95 supersede any provisions of existing ordinances in conflict herewith to the extent of said
96 conflict.

97
98 **Section 5.** Severability. In the event that any portion of this ordinance is for any
99 reason held invalid or unconstitutional by any court of competent jurisdiction, such portion
100 shall be deemed a separate, distinct and independent provision, and such holding shall not
101 affect the validity of the remaining portions of this ordinance.

102
103 **Section 6.** Effective Date. This Ordinance shall take effect immediately upon its
104 adoption by the Village Council.

105
106 **PASSED** on first reading this _____ day of _____, 2015

107
108 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
109 Florida this _____ day of _____, 2015.

110
111 Attest: **VILLAGE OF ESTERO, FLORIDA**

112
113 By: _____ By: _____
114 Kathy Hall, MMC Nicholas Batos
115 Village Clerk Mayor

116
117 Reviewed for legal sufficiency:

118
119
120 By: _____
121 Burt Saunders, Esq.
122 Village Attorney

123
124 Vote: AYE NAY
125 Mayor Batos _____
126 Vice Mayor Levitan _____
127 Councilmember Boesch _____
128 Councilmember Brown _____
129 Councilmember Errington _____
130 Councilmember Ribble _____
131 Councilmember Wilson _____