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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 STIMULATION 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 Statutes, 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

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

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

50
51 **Section 1.** The forgoing recitals are true and correct and are incorporated herein by
52 this reference.
53

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

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

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

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

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

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

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

84 (d) Excavations for purpose of water retention or other land development. No excavation
85 activities, including removal of surplus material may be commenced prior to receiving

86 approval in accordance with the provisions of section 10-329 or chapter 12, as
87 applicable.
88

89 **Section 3.** Codification. The Village Council intends that this Ordinance be made
90 part of the Code of Laws and Ordinances of the Village of Estero, Florida; and that sections of
91 this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to
92 accomplish codification, and regardless of whether this Ordinance is ever codified, the
93 Ordinance can be renumbered or re-lettered and typographical errors and clarifications of
94 ambiguous wording that do not affect the intent can be corrected with the authorization of the
95 Village Manager without the need for a public hearing.
96

97 **Section 4.** Conflict with other Ordinances. The provisions of this article shall
98 supersede any provisions of existing ordinances in conflict herewith to the extent of said
99 conflict.
100

101 **Section 5.** Severability. In the event that any portion of this ordinance is for any
102 reason held invalid or unconstitutional by any court of competent jurisdiction, such portion
103 shall be deemed a separate, distinct and independent provision, and such holding shall not
104 affect the validity of the remaining portions of this ordinance.
105

106 **Section 6.** Effective Date. This Ordinance shall take effect immediately upon its
107 adoption by the Village Council.
108

109 **PASSED** on first reading this 2nd day of December, 2015
110

111 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
112 Florida this ____ day of _____, 2015.
113

114 Attest: **VILLAGE OF ESTERO, FLORIDA**
115

116 By: _____ By: _____
117 Kathy Hall, MMC Nicholas Batos
118 Village Clerk Mayor
119

120 Reviewed for legal sufficiency:
121

122
123 By: _____
124 Burt Saunders, Esq.
125 Village Attorney
126
127
128

129	Vote:	AYE	NAY
130	Mayor Batos	_____	_____
131	Vice Mayor Levitan	_____	_____
132	Councilmember Boesch	_____	_____
133	Councilmember Brown	_____	_____
134	Councilmember Errington	_____	_____
135	Councilmember Ribble	_____	_____
136	Councilmember Wilson	_____	_____