

MEMORANDUM

MSC
Agenda Item No. 1(G)2

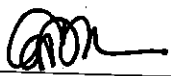
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners


DATE: September 13, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to zoning;
prohibiting use of land for well
stimulation for oil and gas
exploration or production;
providing criteria and notice and
hearing prerequisites for
variances; providing for
applicability in incorporated
areas; creating Chapter 33,
Article XLII, sections 33-435
through 33-438 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava and Co-Sponsors Commissioner Sally A. Heyman and Commissioner Barbara J. Jordan.



Abigail Price-Williams
County Attorney 

APW/cp

Memorandum



Date:

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

Subject: Fiscal Impact Statement for Zoning Ordinance Prohibiting Use of Land for Well Stimulation

The proposed ordinance creates Article XLII, Sections 33-435 through 33-438 under Chapter 33 of the Code of Miami-Dade County to regulate and prohibit the use of lands for oil or gas exploration or production through well stimulation (fracking). Furthermore, this proposed ordinance establishes the criteria and procedures by which a variance can be granted upon approval by the Board of County Commissioner at a public hearing where it is demonstrated that approval is in the interest of the public.

The proposed ordinance does not create a fiscal impact to the County in the event that a variance is filed as no additional staff is anticipated and any operating costs associated with the required notices will be borne by the applicant.

A handwritten signature in black ink, appearing to read "Jack Osterholt", written over a horizontal line.

Jack Osterholt
Deputy Mayor

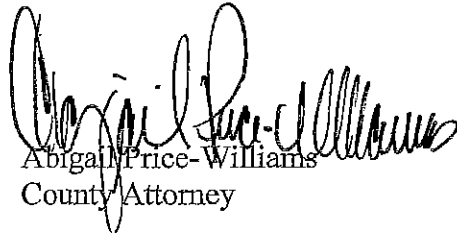
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MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 21, 2016

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 4(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(A)
6-21-16

ORDINANCE NO. _____

ORDINANCE RELATING TO ZONING; PROHIBITING USE OF LAND FOR WELL STIMULATION FOR OIL AND GAS EXPLORATION OR PRODUCTION; PROVIDING CRITERIA AND NOTICE AND HEARING PREREQUISITES FOR VARIANCES; PROVIDING FOR APPLICABILITY IN INCORPORATED AREAS; CREATING CHAPTER 33, ARTICLE XLII, SECTIONS 33-435 THROUGH 33-438 OF THE CODE OF MIAMI-DADE COUNTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Chapter 33, Article XLII of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

ARTICLE XLII. - WELL STIMULATION FOR OIL AND GAS EXPLORATION OR PRODUCTION

Sec. 33-435. - Purpose and applicability.

- (a) This article shall be applicable in the unincorporated areas of Miami-Dade County and as a minimum standard in the incorporated areas of Miami-Dade County.
- (b) Nothing contained herein shall prevent or prohibit a municipality from adopting or enforcing regulations that are stricter than those contained in this article. Any and all relief from this article may only be granted by the Board of County Commissioners.
- (c) The purpose of this article is to provide additional protections against incompatible land uses in Miami-Dade County by prohibiting the use of lands in Miami-Dade County for oil and gas exploration or production through well stimulation, as defined in this Article, including processes commonly known as "fracking."

Sec. 33-436. - Legislative findings.

The health, safety, welfare, comfort, and convenience of the present and future residents of Miami-Dade County are dependent upon the orderly development and compatibility of uses on lands in Miami-Dade County. Ensuring compatibility of land uses within Miami-Dade County is of paramount importance in protecting private property rights of landowners, avoiding interference with other lawful land uses, and avoiding adverse impacts to parks, preservation lands, and other areas that enjoy unique protections for the benefit of all residents of Miami-Dade County.

The use of land for oil and gas exploration or production through "well stimulation," as defined in this Article, (including the use of techniques commonly known as "fracking"), and efforts to engage in well stimulation, have increased around the United States in recent years. Well stimulation, and its associated or ancillary activities, have been shown to have negative impacts to surrounding lands, including lands beyond the immediate vicinity of a well site, that are incompatible with residential, commercial, agricultural, and other land uses and that are not easily reversible. In addition to impacts such as odor, noise, light, and heavy truck traffic, potential impacts associated with well stimulation, which may also affect properties far beyond the well site, include: structural damage to buildings, foundations, or underground infrastructure resulting from induced seismic activity; increased demand on infrastructure such as roads and wastewater treatment facilities; increased demand on water resources; impacts to public and private drinking water supplies; and leaking or leaching of chemicals or natural gas resulting in environmental contamination to air, water, or soils. In addition, the specific chemicals used in well stimulation are neither disclosed nor strictly regulated by any federal or state agency, and therefore the full extent of the incompatibility of well stimulation with surrounding land uses cannot be assessed at this time. The impacts from well stimulation could also negatively affect the economy of Miami-Dade County, including but not limited to certain large industries such as tourism and agriculture.

For all of these reasons, it is necessary to protect the health, safety, welfare, comfort, and convenience of the present and future residents of Miami-Dade County by enacting the land use regulations in this article to specifically regulate and prohibit the use of lands in Miami-Dade County for oil and gas exploration or production through the use of well stimulation.

Sec. 33-437. - Uses prohibited by this article.

Notwithstanding anything in this chapter or any municipal regulations to the contrary, the use of property for oil and gas exploration or production through the use of well stimulation, including any ancillary or associated activities, shall be prohibited. For purposes of this article, "well stimulation" is defined as a well intervention, exploration, operation, or maintenance procedure performed by injecting fluid, which may include additives, into a rock formation to increase the rate of production at an oil or gas well by increasing the flow of hydrocarbons from the formation into the wellbore. Well stimulation includes, but is not limited to, the processes known as hydraulic fracturing, acid fracturing, and cyclic steam injection, which are sometimes referred to as "fracking," as well as matrix acidizing and fracture acidizing. Well stimulation does not include routine well cleaning that does not affect the integrity of the well or the formation.

Sec. 33-438. - Variances.

- (a) *Variance criteria.* No variances from the provisions of this article may be granted, except: where it would not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions herein will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided that the variance will be in harmony with the general purpose and intent of the regulations, and that the same is the minimum variance that will permit the reasonable use of the premises. In addition, any variance of the requirements of this article may only be granted by the Board of County Commissioners and only after a demonstration by competent substantial evidence:
- (i) that the variance is the minimum variance that will permit the reasonable use of the premises, and
 - (ii) that the variance will not result in irreversible impacts to lands in Miami-Dade County that affect their designated or existing uses, including, at a minimum, an analysis of the following impacts:
 - 1. structural damage to buildings, foundations, or underground infrastructure resulting from induced seismic activity;
 - 2. impacts to public and private drinking water supplies and wastewater treatment facilities;

3. increased demand on water resources; and
4. leaking or leaching of chemicals or natural gas.

(b) *Notice and hearing prerequisites to action on variance application.*

(i) No action on any application for variance of this article shall be taken until a public hearing has been held before the Board of County Commissioners upon notice in accordance with this section, the cost of said notice to be borne by the applicant.

(ii) *Recommendation.* For every application filed hereunder, the Director shall prepare a written recommendation, which shall also include a statement of the Director as to the application's relationship to the Comprehensive Development Master Plan. All such recommendations shall state all facts relevant to the application, including an accurate depiction of known living, working, traffic, and transportation conditions in the vicinity of the property that is the subject of the application, and also a description of all projected effects of the proposed variance on those conditions. All such recommendations shall be signed and considered final no earlier than 30 days prior to the public hearing to give the public an opportunity to provide information to the Director prior to the recommendations becoming final. This shall not preclude earlier, preliminary recommendations. All documents of the County departments evaluating the application, which documents pertain to the application, are open for public inspection to applicants or other interested persons.

(ii) *Mailed notices.* The Director shall mail written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within a 1-mile radius of the subject property, as follows:

1. *Preliminary courtesy notice.* Within 30 days of the filing of an application for variance, a courtesy notice that includes: the applicant's name; the processing number; the subject property size; the location (and street address, if available) of the subject property; a general description of the action requested in the application; a statement that the

application was filed and is being reviewed by the Department and that a future notice will be provided prior to the public hearing thereon; a statement that any interested person is entitled to discuss the application with the Department to the same extent as the applicant is so entitled; and a statement that the application may change during the hearing process. The failure to mail or receive this courtesy notice shall not affect any action or proceeding taken hereunder.

2. *Public hearing notice.* No sooner than 90 days, and no later than 60 days, prior to the public hearing, a written notice containing general information, including the date, time, and place of the hearing, the subject property's location (and street address, if available), and the nature of the application.
- (iii) *Published notices.* The Director shall publish notices of an application for variance as follows:
1. Within 30 days of the filing of an application, a courtesy notice shall be published in the newspaper of largest circulation in Miami-Dade County, containing the same information as the mailed preliminary courtesy notice described above. The failure to publish this courtesy notice shall not affect any action or proceeding taken hereunder.
 2. No sooner than 90 days, and no later than 60 days, prior to the public hearing, a full legal notice shall be published in a newspaper of general circulation in Miami-Dade County, which shall contain the date, time, and place of the hearing, the subject property's location (and street address, if available), and the nature of the application, including all specific variances and other requests.
 3. No sooner than 90 days, and no later than 60 days, prior to the public hearing, a layman's notice shall be published in the newspaper of largest circulation in Miami-Dade County, which shall contain the same information as the full legal notice, except that the nature of the application and

requests contained therein may be summarized in a more concise, abbreviated fashion.

- (iv) *Additional courtesy notices.* When written notice of a public hearing is mailed, courtesy notices containing the same information shall also be mailed to:
1. Each city clerk, city attorney, and city manager for municipalities within Miami-Dade County, and the Executive Director of the Miami-Dade League of Cities, Inc.; and
 2. The president of any homeowners' association having any member who resides within the area of mailed notice described above when such residency is shown upon a current updated notice filed with the Director. The Director shall establish and maintain a process by which homeowners' associations may provide notice of the areas in which their members reside. Homeowners' associations shall keep these notices current by updating them in accordance with procedures to be prescribed by the Director.
 3. The failure to mail or receive these courtesy notices shall not affect any action or proceeding taken hereunder.
- (v) *Posting of property.* The subject property shall be posted no later than 60 days prior to the hearing in a manner conspicuous to the public, by a sign or signs containing information including the variance request, application number, and the time and place of the public hearing. The property owner shall be responsible for ensuring that the sign is maintained on the site until completion of the public hearing and for removal of the sign within 2 weeks following completion of the public hearing.
- (vi) For subject properties with more than one frontage, the notices and advertisements shall include both the mailing address and identification of the street or intersection of any additional frontage.
- (vii) For each type of notice and advertisement required by this article, the person or persons for the mailing, posting, or publication shall attach an affidavit or affidavits thereof to the application file setting forth

- the compliance with the applicable requirement.
- (viii) The Director shall have the discretion to expand any of the notice provisions contained in this section if deemed appropriate.
 - (ix) If the notices described above are published, and the required affidavits are of record, no judicial proceeding to void a hearing shall be commenced after the time for appeal of a quasi-judicial action of a local government board, as provided in the Florida Rules of Appellate Procedure.
 - (x) *Conflicts.* In the event of conflicts with any other provisions of this chapter or applicable municipal regulations regarding notice and hearing prerequisites, the provisions of this article shall govern. In the event that any time periods specified in this subsection regarding notice and hearing prerequisites conflict with any applicable provision of the Florida Statutes, the Florida Statutes shall govern.
- (c) *Municipal approval.* Any municipal approval of the use of property in Miami-Dade County for oil and gas exploration or production through the use of well stimulation shall not be effective unless and until the Board of County Commissioners approves a variance pursuant to the procedures and requirements of this subsection and this article.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Abbie Schwaderer Raurell

Prime Sponsor: Commissioner Daniella Levine Cava
Co-Sponsors: Commissioner Sally A. Heyman
Commissioner Barbara J. Jordan