



AGENDA REPORT

Meeting Date: April 22, 2014

Item Number: F-1

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS TO PROHIBIT HYDRAULIC FRACTURING, ACIDIZING OR ANY OTHER WELL STIMULATION TREATMENT IN CONJUNCTION WITH THE PRODUCTION OR EXTRACTION OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES FROM ANY SURFACE LOCATION IN THE CITY OR ANY SUBSURFACE BOTTOM HOLE IN THE CITY

Attachments:

1. Ordinance
2. Planning Commission Resolution No. 1711
3. March, 27, 2014 Planning Commission Report (without attachments)

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "an ordinance of the City of Beverly Hills to prohibit hydraulic fracturing, acidizing or any other well stimulation treatment in conjunction with the production or extraction of oil, gas or other hydrocarbon substances from any surface location in the City or any subsurface bottom hole in the City" be introduced and read by title only.

INTRODUCTION

Pursuant to City Council direction at its January 7, 2014 meeting, the Planning Commission considered and adopted a resolution on March 27, 2014, recommending that the City Council adopt an ordinance prohibiting hydraulic fracturing (fracking), acidizing or any other well stimulation treatment in the City. The Planning Commission approved the resolution by a vote of 3-1 with one commissioner abstaining.

BACKGROUND

Hydraulic fracturing refers to the process of injecting pressurized fluids into underground geologic formations in order to fracture the formation to enhance the production of hydrocarbon substances. Hydraulic fracturing fluids may include a mix of water, sand, and chemicals. Acidization is the process of applying acid to an underground geologic formation in order to enhance the production of hydrocarbon substances. Acidization can be used in conjunction with hydraulic fracturing. Collectively, these treatments are referred to herein as “well stimulation.” Currently, there is no known well stimulation taking place in the City of Beverly Hills; however, it is used in the Inglewood Oil Field located in the cities of Culver City, Inglewood, and the Baldwin Hills area of Los Angeles.

These well stimulation treatments have garnered increased attention over the past several years due to concerns that these practices may contaminate groundwater supplies and increase seismic activity. Because of this, many local jurisdictions have begun to take steps to regulate well stimulation. On July 2, 2012, Culver City adopted a resolution requesting the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR), which regulates oil drilling in the state, to ban fracking statewide. The City of Santa Monica adopted a similar resolution on November 27, 2012. In February, 2014, the Los Angeles City Council directed the City Attorney to prepare an ordinance that would amend the city’s zoning code to prohibit fracking within the city until the process is proven safe and regulations are adopted to prevent its adverse effects. The ordinance is expected to be prepared within the next few months.

The state has also taken steps to regulate fracking as well as other well stimulation practices. On September 20, 2013, a State Bill, SB 4, was signed by Governor Brown. SB 4 regulates fracking by requiring any oil company that wants to utilize hydraulic fracturing and/or acidization to test and monitor groundwater, notify neighbors of fracking activities and disclose the acids used in oil extraction processes. SB 4 also requires the State Department of Natural Resources to conduct an independent, peer reviewed assessment of fracking, which is to be completed by January 1, 2015. Additionally, on April 8, 2014, the Senate Natural Resources and Water Committee approved a bill (SB 1132) that would impose a state-wide moratorium on hydraulic fracturing, acidization, and other well stimulation treatments until those practices are found to be safe. At this point it is unclear whether the Legislature will ultimately pass AB 1132 or whether the Governor would sign it into law.

At a City Council Study Session on November 20, 2012, the Beverly Hills City Council Legislative Committee (then Mayor Brien and Vice Mayor Mirisch) reported their support for a request by Culver City and the Westside Cities Council of Governments to request a state ban on fracking until further research could be conducted and regulations could be developed, which they had discussed at a Legislative Committee meeting on October 9, 2012. At a City Council meeting on January 7, 2014, the City’s Legislative Committee requested that the City Council consider formally opposing fracking. The Legislative Committee expressed concerns over the lack of stringent federal and state policies that protect against the potential negative impacts of hydraulic fracturing and lack of scientific information on hydraulic fracturing. During this discussion, the City Council concurred with the Legislative Committee’s recommendation and directed staff to draft a prohibition on fracking. The attached ordinance reflects this direction.

Existing City Regulations on Drilling

Oil wells are regulated in Article 3 of Chapter 5 of Title 10 of the municipal code. Currently, the municipal code prohibits the establishment of new surface oil drilling and extraction activities in the City. One site in the City, the Venoco Inc. site adjacent to the high school, is the only remaining surface drilling operation in the City that has a vested right to continue its operation. On October 18, 2011, the City Council adopted an ordinance prohibiting drilling and extraction operations at this site after December 31, 2016, but the ordinance includes a provision that the City Council may extend that date upon finding that it is in the public interest to do so. This ordinance also banned new surface directional drilling and extraction of oil, gas and other hydrocarbon substances from locations within 500 feet of any park or school when the drilling operation seeks to access mineral rights under the City.

In 2013, the City adopted an ordinance amending the 2011 ordinance to revise the separation requirements between oil wells and sensitive uses and requiring inspection of oil wells for subsidence. This ordinance clarified that any oil and gas well drilled pursuant to any Council permit shall be located at least 500 feet from any school or park site located in the City of Beverly Hills. This clarification would mean that proximity to school or park sites in other jurisdictions, such as the City of Los Angeles, would not be considered by the Beverly Hills City Council in approving or renewing oil well permits.

DISCUSSION

Proposed Ordinance

The proposed ordinance defines “hydraulic fracturing,” “acidizing,” and “well stimulation treatment” and amends Section 10-5-324 of the Beverly Hills Municipal Code (BHMC) to make it unlawful to use any of those practices in conjunction with the production or extraction of oil, gas, or other hydrocarbon substances from any surface location in the City. Additionally, it prohibits these activities from any site outside the City limits where the subsurface bottom hole is located in the City.

The benefits and considerations of the proposed ban on well stimulation in the City are presented below.

Considerations

Hydraulic fracturing can make it easier to extract hard to reach oil and gas deposits through the injection of liquids at high pressure to fracture subsurface rock. Those opposed to placing a ban on such well stimulation techniques generally argue that actions could threaten the supply of oil and natural gas and raise costs of such commodities. Prohibiting well stimulation could limit the ability of oil producers to access these resources, and potentially impact the royalties that property owners would receive from extraction of these resources.

Benefits

Proponents of fracking bans claim that there are environmental and health impacts related to fracking and that well stimulation practices have not been studied enough to conclude that they are safe. Ban proponents report impacts related to groundwater contamination, increased seismic activity, and air quality impacts. The exact impact of fracking on drinking water, the environment and public health are unknown. As discussed by the City Legislative Committee

on January 7, 2014, there are few regulations at the state and national level that govern this potentially hazardous industrial activity. Prohibiting fracking could protect natural resources and human health until well stimulation practices are studied more thoroughly.

GENERAL PLAN CONSISTENCY

The Planning Commission found that the proposed zone text amendments are consistent with policies of the Conservation and Safety Elements of the General Plan including the following:

CON 21 Oil & Gas. Minimized impacts from oil and gas activities.

CON 21.1 New Extraction Activities. Prohibit new drill sites in new locations within the City for production of oil, gas, or other hydrocarbon substances. (Imp. 2.1)

CON 21.2 Existing Extraction Facilities. Develop a plan to phase out existing oil drilling sites as soon as practicable. (Imp. 2.1).

While the ordinance amendments do not specifically prohibit new drill sites in new locations or phase out existing drill sites, the amendments are meant to minimize potential impacts from oil and gas activities in the City by prohibiting well stimulation techniques to access oil and gas.

The proposed ordinance amendments are also consistent with policies in the Safety Element of the General Plan including:

S 6 Protection from Hazardous Materials. To ensure that the health, safety and general welfare of residents, visitors and the overall natural environment is protected to the maximum extent feasible from harmful exposure to hazardous materials

S 6.6 Siting of Sensitive Uses. For uses that generate or use hazardous materials, develop and implement strict land use controls, performance standards, and structure design standards, including development setbacks from sensitive uses such as schools, hospitals, day care facilities, elder care facilities, residential uses, and other sensitive uses. (Imp. 2.2)

The Commission found that the ordinance amendments are meant to ensure the health, safety and general welfare of residents, visitors and the natural environment by prohibiting well stimulation activities, because the potential health and environmental impacts of such activities are currently unknown.

ENVIRONMENTAL ANALYSIS

The amendments included in the draft ordinance have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The Ordinance represents an action by a regulatory agency for the protection of natural resources; therefore this Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15308 of Title 14 of the California Code of Regulations.

PUBLIC NOTICING AND COMMENTS

The Planning Commission public hearing held on March 27, 2014, was noticed in the Beverly Hills Courier on March 14, 2014, and the Beverly Hills Weekly on March 20, 2014. One letter in support of the draft ordinance was submitted by a member of the public.

This public hearing was noticed in the Beverly Hills Courier on April 11, 2014, and the Beverly Hills Weekly on April 17, 2014.

Additionally, meeting agendas for all meetings held on the topic were posted at City Hall, the Library, and Civic Center Parking Garage, and on the City's website.

FISCAL IMPACTS

Because there are currently no fracking or other well stimulation activities taking place in the City, there would be no immediate fiscal impacts resulting from the implementation of this ordinance. Prohibiting these activities may result in lost potential future revenue for entities that receive royalties from drilling activities in the City; however, at this time these impacts cannot be estimated.

Susan Healy Keene, AICP
Director of Community Development

Approved By


Attachment 1

Ordinance

ORDINANCE NO. 14-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS TO PROHIBIT HYDRAULIC FRACTURING, ACIDIZING OR ANY OTHER WELL STIMULATION TREATMENT IN CONJUNCTION WITH THE PRODUCTION OR EXTRACTION OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES FROM ANY SURFACE LOCATION IN THE CITY OR ANY SUBSURFACE BOTTOM HOLE IN THE CITY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 10-5-303 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code is hereby amended to insert the following definition between the terms “EXPLORATORY AREA” and “OIL WELL” as they presently appear in Section 10-5-303, with all other definitions in the Section remaining as previously adopted:

“HYDRAULIC FRACTURING: Any well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids, which may include a mixture of water, chemicals and sand, into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil, gas or other hydrocarbon substances from a well.”

Section 2. Section 10-5-303 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code is hereby amended to insert the following definition above the term “APPLICANT” as it presently appears in Section 10-5-303, with all other definitions in the Section remaining as previously adopted:

“ACIDIZING: Any well stimulation treatment that uses, in whole or in part, the application of one or more acids, at any pressure, to an underground geologic formation with the intent to cause or enhance the production of oil, gas or other hydrocarbon substances from a well. Acidizing may be used in conjunction with hydraulic fracturing or any other well stimulation treatment. Acidizing may include, but is not limited to, processes known as acid fracturing and acid matrix stimulation.”

Section 3. Section 10-5-303 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills

Municipal Code is hereby amended to insert the following definition after the term

“PERMITTEE” as it presently appears in Section 10-5-303, with all other definitions in the

Section remaining as previously adopted:

“WELL STIMULATION TREATMENT: Any treatment or process of a well designed to enhance oil, gas or other hydrocarbon substance production or recovery by increasing the permeability of the underground geologic formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing and acidizing. Well stimulation treatments do not include routine maintenance work or other routine activities that do not affect the integrity of a well or underground geologic formation.”

Section 4. Section 10-5-318 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills

Municipal Code is hereby amended to insert a new Subsection (A)(48) to read as follows, with

all other provisions of Section 10-5-318 remaining as previously adopted:

“48. The permittee shall not use or cause to be used hydraulic fracturing, acidizing, or any other well stimulation treatment.”

Section 5. Section 10-5-324 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills

Municipal Code is hereby added to read as follows:

“10-5-324: HYDRAULIC FRACTURING, ACIDIZING AND WELL STIMULATION TREATMENTS

Notwithstanding any other provision of this article, it shall be unlawful to use or cause to be used hydraulic fracturing, acidizing, or any other well stimulation treatment in conjunction with the production or extraction of oil, gas or other hydrocarbon substances from any surface location in the City or from any site outside the City limits where the subsurface bottom hole is located in the City.”

Section 6. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds and determines that the adoption of this Ordinance is exempt from CEQA pursuant to Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration,

enhancement, or protection of the environment. The Class 8 exemption is applicable because this Ordinance is intended to amend the City's regulatory process for permitting oil and gas production in such a way as to better protect the environment.

Section 7. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

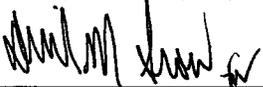
Adopted:
Effective:

LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



SUSAN HEALY KEENE,
Director of Community Development

Attachment 2

Planning Commission Resolution No.
1711

RESOLUTION NO. 1711

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT HYDRAULIC FRACTURING, ACIDIZING OR ANY OTHER WELL STIMULATION TREATMENT IN CONJUNCTION WITH THE PRODUCTION OR EXTRACTION OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES FROM ANY SURFACE LOCATION IN THE CITY OR ANY SUBSURFACE BOTTOM HOLE IN THE CITY

WHEREAS, on January 7, 2014, the City Council held a meeting at which the City Council's Legislative Committee requested that the City Council consider adopting an ordinance to formally oppose the practice of hydraulic fracturing within the City; and

WHEREAS, the City Council concurred with the Legislative Committee's recommendation and directed staff to prepare an ordinance to prohibit hydraulic fracturing.

WHEREAS, on March 27, 2014, the Planning Commission conducted a duly noticed public hearing where it received oral and documentary evidence regarding a proposed ordinance to amend various Municipal Code provisions related to oil and gas drilling and extraction that would prohibit hydraulic fracturing and similar processes within the City;

WHEREAS, the Planning Commission considered the proposed amendments to the City of Beverly Hills Municipal Code, as set forth in the draft ordinance attached hereto as Attachment A (the "Amendments"); and

WHEREAS, the Planning Commission finds that the proposed Amendments promote the public health, safety, and general welfare, and that such Amendments are consistent with the general objectives, principles, and standards of the General Plan, including the following policies from the Conservation Element and the Safety Element of the General Plan:

CON 21.1 New Extraction Activities. Prohibit new drill sites in new locations within the City for production of oil, gas, or other hydrocarbon substances.

CON 21.2 Existing Extraction Facilities. Develop a plan to phase out existing oil drilling sites as soon as practicable.

CON 8.1 Monitoring of Toxins. Continue to monitor businesses that may generate toxic or potentially hazardous substances in order to prevent contamination of water and wastewater.

S 6.6 Siting of Sensitive Uses. For uses that generate or use hazardous materials, develop and implement strict land use controls, performance standards, and structure design standards, including development setbacks from sensitive uses such as schools, hospitals, day care facilities, elder care facilities, residential uses, and other sensitive uses.

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

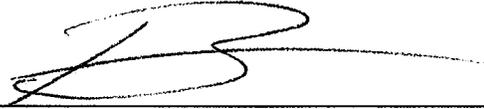
Section 1. The proposed Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The Planning Commission hereby recommends that the City Council find and determine that the adoption of this Ordinance is exempt from CEQA pursuant to Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment. The Class 8 exemption is applicable because this Ordinance is intended to amend the City's regulatory process for permitting oil and gas production in such a way as to better protect the environment.

Section 2. The Planning Commission does hereby find that it is in the public interest to prohibit hydraulic fracturing, acidizing and other well stimulation treatments in conjunction with the production of oil, gas, or other hydrocarbon substances from any surface location in the City or any subsurface bottom hole in the City. At this time, the environmental and health impacts of such activities are unknown, and some evidence suggests that they could have the potential to adversely affect water and air quality and may cause an unsafe increase in seismic activity.

Section 3. The Planning Commission does hereby recommend to the City Council the adoption of an ordinance approving and enacting the proposed Amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: 3/27/2014



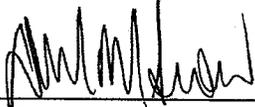
Brian Rosenstein
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
Assistant Director of Community Development /
City Planner

Exhibit A

[Draft] ORDINANCE NO. 14-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS TO PROHIBIT HYDRAULIC FRACTURING, ACIDIZING OR ANY OTHER WELL STIMULATION TREATMENT IN CONJUNCTION WITH THE PRODUCTION OR EXTRACTION OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES FROM ANY SURFACE LOCATION IN THE CITY OR ANY SUBSURFACE BOTTOM HOLE IN THE CITY

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Section 2. Section 10-5-303 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code is hereby amended to insert the following definition above the term “APPLICANT” as it presently appears in Section 10-5-303, with all other definitions in the Section remaining as previously adopted:

“ACIDIZING: Any well stimulation treatment that uses, in whole or in part, the application of one or more acids, at any pressure, to an underground geologic formation with the intent to cause or enhance the production of oil, gas or other hydrocarbon substances from a well. Acidizing may be used in conjunction with hydraulic fracturing or any other well stimulation treatment. Acidizing may include, but is not limited to, processes known as acid fracturing and acid matrix stimulation.”

Section 3. Section 10-5-303 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code is hereby amended to insert the following definition after the term “PERMITTEE” as it presently appears in Section 10-5-303, with all other definitions in the Section remaining as previously adopted:

“WELL STIMULATION TREATMENT: Any treatment or process of a well designed to enhance oil, gas or other hydrocarbon substance production or recovery by increasing the permeability of the underground geologic formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing and acidizing. Well stimulation treatments do not include routine maintenance work or other routine activities that do not affect the integrity of a well or underground geologic formation.”

Section 4. Section 10-5-318 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code is hereby amended to insert a new Subsection (A)(48) to read as follows, with all other provisions of Section 10-5-318 remaining as previously adopted:

“48. The permittee shall not use or cause to be used hydraulic fracturing, acidizing, or any other well stimulation treatment.”

Section 5. Section 10-5-324 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code is hereby added to read as follows:

“10-5-324: HYDRAULIC FRACTURING, ACIDIZING AND WELL STIMULATION TREATMENTS

Notwithstanding any other provision of this article, it shall be unlawful to use or cause to be used hydraulic fracturing, acidizing, or any other well stimulation treatment in conjunction with the production or extraction of oil, gas or other hydrocarbon substances from any surface location in the City or from any site outside the City limits where the subsurface bottom hole is located in the City.”

Section 6. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds and determines that the adoption of this Ordinance is exempt from CEQA pursuant to Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration,

enhancement, or protection of the environment. The Class 8 exemption is applicable because this Ordinance is intended to amend the City's regulatory process for permitting oil and gas production in such a way as to better protect the environment.

Section 7. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager

SUSAN HEALY KEENE,
Director of Community Development

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1711 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on March 27, 2014, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

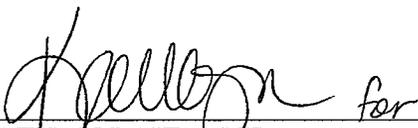
AYES: Commissioners Shooshani, Corman, Chair Rosenstein.

NOES: Vice Chair Fisher.

ABSTAIN: None.

ABSENT: None.

RECUSED: Commissioner Block.



JONATHAN LAIT, AICP
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California

Attachment 3

**March, 27, 2014 Planning Commission
Report (without attachments)**



Planning Commission Report

Meeting Date: March 27, 2014

Subject: Hydraulic Fracturing Ban

Recommendation: Adopt a resolution recommending that the City Council adopt an ordinance amending the Beverly Hills Municipal Code to prohibit hydraulic fracturing, acidizing or any other well stimulation treatment in conjunction with production of oil, gas or other hydrocarbon substances.

REPORT SUMMARY

The purpose of this public hearing is to consider a resolution recommending that the City Council adopt an ordinance prohibiting the use of hydraulic fracturing (fracking), acidizing and other well stimulation treatments to produce or extract oil, gas or other hydrocarbon substances in the City of Beverly Hills.

BACKGROUND

Hydraulic Fracturing

Hydraulic fracturing refers to the process of injecting pressurized fluids into underground geologic formations in order to fracture the formation to enhance the production of hydrocarbon substances. Hydraulic fracturing fluids may include a mix of water, sand, and chemicals. Acidization is the process of applying acid to an underground geologic formation in order to enhance the production of hydrocarbon substances. Acidization can be used in conjunction with hydraulic fracturing. Collectively, these treatments are referred to herein as "well stimulation." Currently, there is no known well stimulation taking place in the City of Beverly Hills; however, it is used in the Inglewood Oil Field located in the cities of Culver City, Inglewood, and the Baldwin Hills area of Los Angeles.

These well stimulation treatments have garnered increased attention over the past several years due to concerns that these practices may contaminate groundwater supplies and increase seismic activity. Because of this, many local jurisdictions have begun to take steps to regulate well stimulation. On July 2, 2012, Culver City adopted a resolution requesting the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR), which regulates oil drilling in the state, to ban fracking statewide. The City of Santa Monica adopted a similar resolution on November 27, 2012. In February, 2014, the Los Angeles City Council directed the City Attorney to prepare an ordinance that would amend the city's zoning code to prohibit fracking within the city until the process is proven safe and regulations are adopted to prevent its adverse effects. The ordinance is expected to be prepared within the next few months.

Attachments:

- 1 – Resolution
- 2 – Draft Ordinance
- 3 – City of Los Angeles City Council Motion on Fracking

Report Author and Contact Information:

Timmi Tway, Assistant Planner
ttway@beverlyhills.org
310-285-1122

The state has also taken steps to regulate fracking as well as other well stimulation practices. On September 20, 2013, a State Bill, SB 4, was signed by Governor Brown. SB 4 regulates fracking by requiring any oil company that wants to utilize hydraulic fracturing and/or acidization to test and monitor groundwater, notify neighbors of fracking activities and disclose the acids used in oil extraction processes. SB 4 also requires the State Department of Natural Resources to conduct an independent, peer reviewed assessment of fracking, which is to be completed by January 1, 2015.

The City of Beverly Hills has also considered well stimulation issues over the past several years. At a City Council Study Session on November 20, 2012, the Beverly Hills City Council Legislative Committee (then Mayor Brien and Vice Mayor Mirisch) reported their support for a request by Culver City and the Westside Cities Council of Governments to request a state ban on fracking until further research could be conducted and regulations could be developed, which they had discussed at a Legislative Committee meeting on October 9, 2012. At a City Council meeting on January 7, 2014, the City's Legislative Committee requested that the City Council consider formally opposing fracking. The Legislative Committee expressed concerns over the lack of stringent federal and state policies that protect against the potential negative impacts of hydraulic fracturing and lack of scientific information on hydraulic fracturing. During this discussion, the City Council concurred with the Legislative Committee's recommendation and directed staff to draft a prohibition on fracking. The attached ordinance reflects this direction.

Existing City Regulations on Drilling

Oil wells are regulated in Article 3 of Chapter 5 of Title 10 of the municipal code. Currently, the municipal code prohibits the establishment of new surface oil drilling and extraction activities in the City. One site in the City, the Venoco Inc. site adjacent to the high school, is the only remaining surface drilling operation in the City that has a vested right to continue its operation. On October 18, 2011, the City Council adopted an ordinance prohibiting drilling and extraction operations at this site after December 31, 2016, but the ordinance includes a provision that the City Council may extend that date upon finding that it is in the public interest to do so. This ordinance also banned new surface directional drilling and extraction of oil, gas and other hydrocarbon substances from locations within 500 feet of any park or school when the drilling operation seeks to access mineral rights under the City.

In 2013, the City adopted an ordinance amending the 2011 ordinance to revise the separation requirements between oil wells and sensitive uses and requiring inspection of oil wells for subsidence. This ordinance clarified that any oil and gas well drilled pursuant to any Council permit shall be located at least 500 feet from any school or park site located in the City of Beverly Hills. This clarification would mean that proximity to school or park sites in other jurisdictions, such as the City of Los Angeles, would not be considered by the Beverly Hills City Council in approving or renewing oil well permits.

DISCUSSION

The proposed ordinance amends Section 10-5-324 of the Beverly Hills Municipal Code (BHMC) to make it unlawful to use hydraulic fracturing, acidizing, or any other well stimulation treatment in conjunction with the production or extraction of oil, gas, or other hydrocarbon substances from any surface location in the City. Additionally, it prohibits these activities from any site outside the City limits where the subsurface bottom hole is located in the City. The benefits and considerations of the proposed ban on well stimulation in the City are presented below.

Considerations

Hydraulic fracturing can make it easier to extract hard to reach oil and gas deposits through the injection of liquids at high pressure to fracture subsurface rock. Those opposed to placing a ban on such well stimulation techniques generally argue that actions could threaten the supply of oil and natural gas and raise costs of such commodities. Prohibiting well stimulation could limit the ability of oil producers to access these resources, and potentially impact the royalties that property owners would receive from extraction of these resources.

Benefits

Proponents of fracking bans claim that there are environmental and health impacts related to fracking and that well stimulation practices have not been studied enough to conclude that they are safe. Ban proponents report impacts related to groundwater contamination, increased seismic activity, and air quality impacts. The exact impact of fracking on drinking water, the environment and public health are unknown. As discussed by the City Legislative Committee on January 7, 2014, there are few regulations at the state and national level that govern this potentially hazardous industrial activity. Prohibiting fracking could protect natural resources and human health until well stimulation practices are studied more thoroughly.

GENERAL PLAN CONSISTENCY

The proposed ordinance amendments are consistent with policies in the Conservation Element of the General Plan including the following:

CON 21 Oil & Gas. Minimized impacts from oil and gas activities.

CON 21.1 New Extraction Activities. Prohibit new drill sites in new locations within the City for production of oil, gas, or other hydrocarbon substances. (Imp. 2.1)

CON 21.2 Existing Extraction Facilities. Develop a plan to phase out existing oil drilling sites as soon as practicable. (Imp. 2.1)

CON 8.1 Monitoring of Toxins. Continue to monitor businesses that may generate toxic or potentially hazardous substances in order to prevent contamination of water and wastewater. (Imp. 3.3, 3.4).

While the ordinance amendments do not specifically prohibit new drill sites in new locations or phase out existing drill sites, the amendments are meant to minimize potential impacts from oil and gas activities in the City by prohibiting well stimulation techniques to access oil and gas. Additionally, the ordinance is intended to prohibit the use of certain unknown chemicals that may have an adverse effect on water quality.

The proposed ordinance amendments are also consistent with policies in the Safety Element of the General Plan including:

S 6 Protection from Hazardous Materials. To ensure that the health, safety and general welfare of residents, visitors and the overall natural environment is protected to the maximum extent feasible from harmful exposure to hazardous materials

S 6.6 Siting of Sensitive Uses. For uses that generate or use hazardous materials, develop and implement strict land use controls, performance standards, and structure design standards, including development setbacks from sensitive uses such as schools, hospitals, day care facilities, elder care facilities, residential uses, and other sensitive uses. (Imp. 2.2)

The ordinance amendments are meant to ensure the health, safety and general welfare of residents, visitors and the natural environment by prohibiting well stimulation activities, because the potential health and environmental impacts of such activities are currently unknown.

ENVIRONMENTAL ASSESSMENT

The amendments included in the draft ordinance have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The Ordinance represents an action by a regulatory agency for the protection of natural resources; therefore this Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15308 of Title 14 of the California Code of Regulations.

PUBLIC OUTREACH

This public hearing was noticed in the Beverly Hills Courier on March 14, 2014, and the Beverly Hills Weekly on March 20, 2014. Additionally, meeting agendas have been posted at City Hall, the Library, and Civic Center Parking Garage, and on the City's website.

RECOMMENDATION

Staff recommends that the Planning Commission adopt the attached resolution recommending that the City Council adopt the ordinance amending the Beverly Hills Municipal Code to prohibit hydraulic fracturing and other well stimulation treatments.



Report Reviewed By:
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City Planner