



AGENDA REPORT

Meeting Date: May 6, 2014

Item Number: E-5

To: Honorable Mayor & City Council

From: Laurence S. Wiener, City Attorney

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

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading, read by title only, and adopt 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."

INTRODUCTION

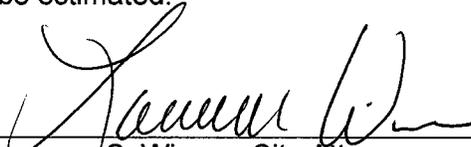
Pursuant to City Council direction at its January 7, 2014 meeting, the Planning Commission considered and adopted a resolution on March 27, 2014, recommending that the City Council adopt an ordinance prohibiting hydraulic fracturing (fracking), acidizing or any other well stimulation treatment in the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

DISCUSSION

At its meeting of April 22, 2014, the City Council conducted a first reading and introduced a revised ordinance that clarifies that the proposed regulations are land use regulations, modifies the definitions of "acidizing" and "well stimulation" and includes an administrative process to address any potential taking claim.

FISCAL IMPACT

Because the City understands there are currently no fracking activities taking place in the City, the City does not anticipate immediate fiscal impacts resulting from the implementation of this ordinance. Prohibiting these activities may result in lost potential future revenue for oil well operators and persons or entities that receive royalties from oil extraction activities in the City; however, at this time these impacts cannot be estimated.



Laurence S. Wiener, City Attorney

Attachment 1

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. Title 10 of the Beverly Hills Municipal Code establishes the City's Planning and Zoning laws. Chapter 5 of Title 10 regulates mining and extraction activities, including land use regulations that restrict the production of oil from drill sites within the City of Beverly Hills. In enacting this chapter, the City Council has determined that uncontrolled subsurface drilling and extraction would be detrimental to the health, safety and welfare of the residents of the City. The regulations set forth in Title 10, Chapter 5 are intended to protect the City's residents and buildings from adverse impacts that may result from the use of land for oil drilling and extraction purposes, including, among other impacts, vibration, sinking, or other damages that may result from uncontrolled oil drilling and extraction.

Section 2. The City Council desires to amend Title 10, Chapter 5 to include additional land use regulations to prohibit the use of property in the City for the purpose of conducting certain types of oil extraction activity, including hydraulic fracturing and similar well stimulation treatments that might alter the natural permeability of the geologic formations beneath the City of Beverly Hills.

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 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 4. 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. Acidizing does not include standard maintenance work or other routine activities that do not affect the integrity of the well or the natural porosity or permeability of an underground geologic formation.”

Section 5. 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 standard maintenance work or other routine activities that do not affect the integrity of a well or the natural porosity or permeability of an underground geologic formation.”

Section 6. 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 7. 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: PROHIBITION AGAINST THE USE OF LAND FOR 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 any land within the City for the purpose of conducting or enabling hydraulic fracturing, acidizing, or any other well stimulation treatment in conjunction with the production or extraction of oil, gas or other hydrocarbon substance from any subsurface location within the City.

However, to the extent that any permittee demonstrates to the city engineer, or the city engineer’s designee, that (1) well stimulation, other than hydraulic fracturing, is necessary to recover the permittee’s reasonable investment backed expectation established through investment made before April 22, 2014 and (2) that such well stimulation will not create a nuisance due to an adverse impact on persons or property within the City, then the city engineer may authorize such well stimulation pursuant to a permit issued pursuant to procedures adopted by the city engineer.”

Section 8. 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 9. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 10. 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 11. 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.

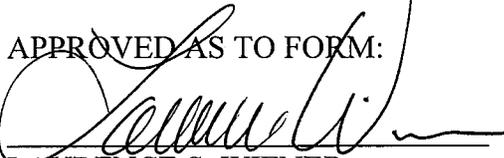
Adopted:
Effective:

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