

ORDINANCE NO. _____

ORDINANCE ADDING CHAPTER 8.400 BAN ON HYDRAULIC FRACTURING IN MENDOCINO COUNTY TO TITLE 8 OF THE MENDOCINO COUNTY CODE

The Mendocino County Board of Supervisors ordain as follows:

Chapter 8.400 is added to the Mendocino county Code as follows:

Section 1. Legislative Findings.

The Board of Supervisors hereby finds as follows:

- A. hydraulic fracturing is not regulated in California and the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR) has no records of the locations or numbers of wells where hydraulic fracturing is being used to extract oil and gas in the state, and does not maintain records of the types and amounts of chemicals used, the amount of water used or the disposition of the wastewater generated by this process; and
- B. the oil and gas industry is granted exceptions to compliance with federal legislation designed to protect the public and the environment, including the Safe Drinking Water Act of 1974 and the Clean Water Act of 1972 (amended 1977 and 1987); and
- C. wastewater from hydraulic fracturing may be laced with hundreds of toxic chemicals, heavy metals and naturally occurring radioactive materials, as documented by the Environmental Protection Agency (EPA) and due to the volume and toxicity of “fracking” wastewater, treating such complex waste is difficult, making safe disposal a significant challenge and posing threats to the environment and public health and safety; and
- D. the “fracking” process releases such hazardous air pollutants as methanol, formaldehyde, and carbon disulfide, in addition to the release of volatile organic compounds including benzene, toluene and nitrogen oxides. The projected 15 billion barrels of oil from the Monterey Shale are estimated to release 6.45 billion metric tons of carbon dioxide, 15 times the total greenhouse gas emitted from all sources in California in 2010; and

- E. the proposed ordinance is categorically exempt under the California Environmental Quality Act as an action taken for the protection of natural resources (14 Cal. Code Regs. 15307) and as an action taken for the protection of the environment (14 Cal Code Regs. 15308).

Section 2. Chapter 8.400 entitled BAN ON HYDRAULIC FRACTURING is hereby added to Title 8 of the County of Mendocino Municipal Code as follows:

CHAPTER 8.400 BAN ON HYDRAULIC FRACTURING

- Section 8.400.010. Findings
- Section 8.400.020. Definitions
- Section 8.400.030. Prohibited Activities
- Section 8.400.040. Exemption of Vested Rights
- Section 8.400.050. Public Disclosure
- Section 8.400.060. Enforcement and Penalties
- Section 8.400.070. Severability
- Section 8.400.080. Effective Date

Section 8.400.010. Findings.

The Board of Supervisors hereby finds as follows:

- A. hydraulic fracturing is not regulated in California and the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR) has no records of the locations or numbers of wells where hydraulic fracturing is being used to extract oil and gas in the state, and does not maintain records of the types and amounts of chemicals used, the amount of water used or the disposition of the wastewater generated by this process; and
- B. the oil and gas industry is granted exceptions to compliance with federal legislation designed to protect the public and the environment, including the Safe Drinking Water Act of 1974 and the Clean Water Act of 1972 (amended 1977 and 1987); and
- C. wastewater from hydraulic fracturing may be laced with hundreds of toxic chemicals, heavy metals and naturally occurring radioactive materials, as documented by the Environmental Protection Agency (EPA) and due to the volume and toxicity of “fracking” wastewater, treating such complex waste is difficult, making safe disposal a

significant challenge and posing threats to the environment and public health and safety; and

- D. the “fracking” process releases such hazardous air pollutants as methanol, formaldehyde, and carbon disulfide, in addition to the release of volatile organic compounds including benzene, toluene and nitrogen oxides. The projected 15 billion barrels of oil from the Monterey Shale are estimated to release 6.45 billion metric tons of carbon dioxide, 15 times the total greenhouse gas emitted from all sources in California in 2010.

Section 8.400.020. Definitions.

- A. “Hydraulic Fracturing” means techniques used in preparing a well that, in whole or in part, typically involve the pressurized injection of water and chemicals, compounds, and materials into an underground geologic formation in order to expand existing fractures or create new fractures in that formation, thereby causing or enhancing the production of oil or gas from a well. For the purposes of this ordinance, hydraulic fracturing shall include the terms “fracking,” “hydrofracking,” hydrofracturing,” “unconventional well stimulation,” and any other nontraditional oil and gas recovery techniques, including procedures commonly referred to as “acidization,” “acid fracturing,” and “gravel packing.”
- B. “Mendocino County” means all that territory within the unincorporated area of Mendocino County.

Section 8.400.030. Prohibited Activities.

It shall be unlawful for any person or entity to engage in hydraulic fracturing in Mendocino County.

Section 8.400.040. Exemption of Vested Rights

This ordinance shall exempt any and all vested rights in well stimulation. A person claiming a vested right must demonstrate to the County through clear and convincing evidence that a vested right exists. The drilling, maintenance, or operation of an existing well does not constitute a vested right to use hydraulic fracturing or other unconventional well stimulation.

Section 8.400.050. Public Disclosure.

Full public disclosure and testing of all existing hydraulic fracturing sites and injection/disposal wells, and allowing government access and testing of the chemicals used in hydraulic fracturing operations, is required.

Section 8.400.060. Enforcement and Penalties.

- A. The Director of Mendocino County Planning & Building Services or designee, shall have primary responsibility for enforcement and shall have the authority to issue citations for violations of this Chapter.
- B. Any person or entity violating or failing to comply with the requirements of this Chapter shall be guilty of a misdemeanor. Said infraction shall be enforced as set forth in MCC section 1.04.110.
- C. Every day any violation of this Section shall continue, shall constitute a separate offense.
- D. The County Counsel may seek legal, injunctive, or any other relief to enforce this Chapter.
- E. In any enforcement action under this section the County is entitled to recover its attorney fees and cost pursuant to MCC 1.04.115.

Section 8.400.070. Effective Date.

This ordinance shall go into full force and effect 90 days after final adoption.

Section 8.400.080. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino,

State of California, on this _____ day of _____, 2014, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted
and **SO ORDERED**.

CHAIR, Board of Supervisors

ATTEST: CARMEL E. ANGELO
Clerk of Said Board

By: _____

APPROVED AS TO FORM:

DOUGLAS L. LOSAK, Acting County Counsel

By: _____