

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2016 Legislative Session

Reference No.: CB-003-2016

Draft No.: 2

Committee: PLANNING, ZONING AND ECONOMIC DEVELOPMENT

Date: February 17, 2016

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 5-0 (In favor: Council Members Harrison, Franklin, Glaros, Taveras and Toles)

Staff gave an overview of the legislation and informed the committee of written referral comments and correspondence that were received. CB-3-2016 (Draft-2) amends the Zoning Ordinance concerning hydraulic fracturing to prohibit the mining and exploration of natural gas by hydraulic fracturing in residential, commercial and industrial zones. The Zoning and Legislative Counsel summarized a Proposed Draft-2 (DR-2) that was prepared to address referral comments that were received. Counsel informed the Committee that Proposed DR-2, which still meets the original purpose of DR-1, is streamlined for clarity with elimination of the residential, commercial and industrial zones use table so there is no need to search for the use in several tables. Proposed DR-2 incorporates Section 27-107.01 of the Zoning Ordinance (Definitions), defines “hydraulic fracturing” in this section as well as Section 27-115 (Prohibited uses) and prohibits hydraulic fracturing uses.

Council Member Lehman, the bill’s sponsor, informed the Committee of a briefing held in the Transportation, Housing and Environment Committee in October 2015 concerning hydraulic fracturing (fracking) and Prince George’s County. With expiration of the statewide ban on fracking in October 2017, Council Member Lehman commented that the Council is within their legislative and legal authority to enact local legislation to prohibit the use in an effort to protect County residents from the health hazards associated with fracking. Council Member Lehman displayed a map of Maryland Gas Basins (Source: U.S. Geological Survey National Assessment of Oil and Gas), including the Taylorsville Basin, a portion of which is located in Prince George’s County.

The Office of Law reviewed CB-3-2016 (DR-1) and determined there are no legal impediments to its enactment. Suggested technical amendments to the legislation were included with the Office of Law memorandum. The Chief Zoning Hearing Examiner provided comments

concerning utilizing the same language in several places of the bill to prohibit the practice of hydraulic fracturing:

1. The Zoning Ordinance provides an area for definitions. It has been an administrative practice to utilize this area, since any future amendments thereto can easily be done without worry of missing an edit elsewhere in the Zoning Ordinance. Accordingly, the bill should be revised to remove the definition shown on page 2, lines 10-17 and repeated on page 3, lines 1-8 and 23-30 and add them either to Section 107.01(a) or 27-115 (for reasons noted below).
2. The Zoning Ordinance is designed in a manner to prohibit all uses that are not expressly permitted. The bill's purpose is to take that a step further by expressly defining hydraulic fracturing and noting that no one may "engage in the hydraulic fracturing of a well for the exploration or production of natural gas in the county." The bill further notes "there is a prohibition against the storage, treatment, transfer, production materials, support activities and disposal of flow back, wastewater, or drill cuttings in the County generated by hydraulic fracturing." Given the bill's intent, it would be better to place it in Part 2, Division 4 (Regulations applicable in all zones). Again, this would insure the ease of any future amendment to the language, and could be easily referenced. Therefore, the bill should be revised to place all of the language under a new Section 27-116.01. If the Council agrees, there is no need to make the revision suggested in paragraph (1) above.

The following individuals testified in support of the legislation: Emily Wurth, representing Food & Water Watch; Darien Pusey, representing Chesapeake Climate Action Network; Katie Huffling, representing Alliance of Nurses for Healthy Environments; Martha Ainsworth, representing the Sierra Club; Kelly Canavan, representing AMP Creeks Council; Barbara Sollner-Webb, representing West Laurel Civic Association; Lili Sheeline, Mary Forsht-Tucker, Joanne Flynn, Nicholas McCarren, Roy Ann Carney, and J.T. Stanley. Ms. Wurth, Ms. Huffling and Ms. Ainsworth also submitted written testimony. Drew P. Cobbs, of Maryland Petroleum Council, submitted a February 17, 2016 handout concerning hydraulic fracturing.

The Committee voted favorable (5-0) including the amendments in Proposed DR-2 consistent with paragraph (1) of the Zoning Hearing Examiner comments.