

**AN ORDINANCE ESTABLISHING A TWO -YEAR MORATORIUM
ON OIL AND GAS DEVELOPMENT WITHIN
THE CORPORATE LIMITS AND EXTRA-TERRITORIAL JURISDICTION OF THE TOWN
OF MADISON, NORTH CAROLINA**

Section 1. Name

This Ordinance shall be known and may be cited as "The Town of Madison Oil and Gas Development Two-Year Moratorium".

Section 2. Definitions

The words and phrases defined in this Section shall have the following meaning in this Ordinance:

1. "Drilling" shall mean the sinking, penetrating, boring, or digging of a shaft or hole in the earth for any purpose.
2. "Gas" shall mean all natural gas, casing-head gas, coal-bed methane, and all other hydrocarbons not defined as oil in Subsection 4.
3. "Extra-Territorial Jurisdiction" or "ETJ" means the legal ability of a government to exercise planning and zoning authority one-mile outside of its corporate boundaries.
4. "Hydraulic Fracturing" or "Fracturing" or "Fracking" means all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geologic formation to enhance production of oil and/or gas.
5. "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.
6. "Oil or Gas Development" means all or any part of the process of exploration, development, or production of oil or gas, including without limitation, drilling, casing, operation, fracturing, completion, plugging, and abandonment of wells, pads, impoundments and other associated activities.
7. "Oil or Gas Operator" means the person who acquires a lease or other property interest in surface and/or subsurface lands for the purpose of conducting exploration for or extracting oil or gas.
8. "Oil or Gas Owner" means the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and others.
9. "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.
10. "Water Supply or "Water Resources" means any groundwater or surface water intended or used for human consumption, household purposes, farm, livestock, or garden purposes, or for conservation and preservation purposes.
11. "Well" means any new or existing shaft or hole drilled, sunk, bored, or dug into the earth or into

underground strata for the extraction, injection, or placement of any oil, liquid, or gas; or any new or existing shaft or hole drilled, sunk, bored, dug or used in conjunction with such extraction, injection, or placement of any oil, liquid, or gas using hydraulic fracturing, fracturing or fracking methods. The term "well" does not include any shaft or hole drilled, sunk, bored, or dug into the earth for the sole purpose of testing for, pumping, or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, public use, or other activity not related to oil or gas development activities.

Section 3. Jurisdiction

This Ordinance shall apply to all lands located within the Town of Madison Corporate Limits and Extra-Territorial Jurisdiction.

Section 4. Purpose

The purpose of this Ordinance is to establish a moratorium to allow the Town of Madison Board of Aldermen time to:

- (1) receive information and research regarding the potential impact of Hydraulic Fracturing and other Oil and Gas Development activities on Town of Madison and Rockingham County roads and other Town of Madison infrastructure, natural resources and on the health and safety of the residents of the Town of Madison and its ETJ;
- (2) determine the adequacy of existing state and federal laws and regulations applicable to Hydraulic Fracturing and other Oil and Gas Development activities;
- (3) develop and evaluate acceptable standards and conditions to be implemented in the Town of Madison Zoning Ordinance to address impacts that are not adequately addressed by applicable state and federal regulations;
- (4) to evaluate the impact of watershed designations on areas within the potential shale reserve where fracking might occur;
- (5) allow time for resolution of pending litigation involving the NC Mining and Energy Commission, as well as litigation involving the authority of the State to issue permits for fracking at this time.

Section 5. Factual Findings

WHEREAS, the Town of Madison Board of Aldermen, based on research and information and views expressed by the residents of the Town of Madison and its ETJ, makes the following findings of fact with respect to conditions necessitating a moratorium on Hydraulic Fracturing and Oil and Gas Development activities in the Town of Madison and its ETJ:

1. Recent test drillings by the North Carolina Department of Energy and Natural Resources have detected signs of shale gas resources in southeastern Stokes County, part of the same Basin that includes western Rockingham County; and
2. The presence of shale gas resources in western Rockingham County, and more specifically in the Dan River Triassic Basin, raises the possibility of oil and gas exploration, development and production and specifically Hydraulic Fracturing or Fracking within the Town of Madison; and
3. Hydraulic Fracturing is a relatively new industry, and significant environmental, community, and human health impacts have resulted from Hydraulic Fracturing in other states, the full extent of which has not yet been determined; and

4. Residents of the Town of Madison depend upon the Community Public Water System operated by the Town for drinking water with an intake located directly on the Dan River; and
5. Many residents of the Town of Madison ETJ depend upon individual wells for drinking water from ground water supplies; and
6. Rockingham County's unique geography and minimal separation between shale formations and groundwater supplies puts the Town of Madison ETJ well water users disproportionately at risk of groundwater supply contamination; and
7. Hydraulic Fracturing could involve the use of hazardous materials and generate large quantities of toxic waste which the Town of Madison is challenged to be equipped to deal with due to its size and rural character; and
8. The Town of Madison and Rockingham County's current highway infrastructure is not equipped to handle the increased traffic from large commercial vehicles which could result from Hydraulic Fracturing activities; and
9. Oil and Gas Exploration, and specifically Hydraulic Fracturing poses a significant threat to the health, safety and welfare of the residents, environment and natural resources of the Town of Madison; and
10. Existing North Carolina statutes and regulations do not adequately protect the health and welfare of the residents of the Town of Madison and do not adequately protect the environment and natural resources within the Town of Madison; and
11. The Town of Madison Board of Aldermen needs additional time to study the impact of Hydraulic Fracturing and other Oil and Gas Development activities in other states, and to determine the adequacy of existing state and federal laws and regulations; and
12. The Town of Madison Board of Aldermen needs additional time to study the potential impact of Hydraulic Fracturing and other Oil and Gas Development activities on Town of Madison and Rockingham County roads and other Town of Madison infrastructure, natural resources and on the health and safety of the residents of the Town of Madison and its ETJ; and
13. The Town of Madison Board of Aldermen needs additional time to revise and update the Town's existing Zoning Ordinance for the purpose of developing and revising, to the extent allowable by law, standards and safeguards for Hydraulic Fracturing and Oil and Gas Development activities in order to protect the health and safety of the residents the Town of Madison and its ETJ as well as protect the environment and natural resources of Town of Madison; and
14. The Town of Madison Board of Aldermen needs additional time to evaluate the consequences of watershed designation on areas within the potential shale reserve where fracking might occur; and
15. The current status of the NC Mining and Energy Commission and the rules it has promulgated regarding fracking is the subject of litigation which may impact the standards and permitting practices for fracking. The Town needs time to generate appropriate standards in the event the outcome of this litigation alters the nature of state regulation of fracking; and
16. The website of the NC Mining and Energy Commission currently provides the following

information regarding the Commission:

On March 16, 2015, the three-judge panel of the Wake County Superior Court issued a decision in the matter of McCrory v. Berger holding the legislative appointments to the state Mining and Energy Commission to be in violation of the separation of powers clause as set forth in the North Carolina Constitution (See McCrory v. Berger, Wake County Sup. Ct. Case No. 14-CVS-015201 (March 16, 2015)). The General Assembly has appealed to the North Carolina Supreme Court, which has neither stayed the Panel's Order nor issued an opinion reversing the panel's decision. Therefore, the panel's order holding "the provisions of NCGS 143B-290(a1) providing for the appointment of members of the North Carolina Mining and Energy Commission by the Legislature are in violation of Article I, Section 6 of the North Carolina Constitution" (McCrory v. Berger, 11) remains in effect. This site will be updated upon the North Carolina Supreme Court's issuing of its opinion in this case.

17. Due to the complexity of the issues involved in Hydraulic Fracturing, the Town of Madison Board of Aldermen needs a minimum of two years within which to develop standards and safeguards to protect the health and safety of the residents of the Town of Madison and its ETJ and protect the environment and natural resources of the Town of Madison.

Section 6. Alternative Courses of Action Considered

The Town of Madison Board of Aldermen considered the following alternatives to a moratorium and determined that the following enumerated alternatives were inadequate:

1. The Board considered taking no action and letting the existing town zoning regulations together with federal and state regulations regulate potential Oil and Gas Development in the Town of Madison and its ETJ. This was not considered to be a viable alternative because the current town zoning regulations do not sufficiently address the potential problems presented by the relatively new industry of Hydraulic Fracturing. Also, the Board did not feel that existing state and federal regulations address the problems that Hydraulic Fracturing could present to a rural community such as Madison.
2. The Board also considered immediately amending the existing zoning ordinance to establish standards and safeguards for Oil and Gas Development in the Town of Madison and its ETJ; however, the Board determined that without further study and research, this would be premature and could result in standards that are inadequate to regulate or mitigate the local impacts, or that are unnecessarily stringent and might be subject to legal challenge as pre-empted by the state statute. The Board determined that it needed more time to determine what conditions are necessary and reasonable to protect the Town in light of the uncertainty of pending litigation at the state level regarding the regulation of fracking.
- 3.

Section 7. Legal Authority

This Ordinance is enacted pursuant to (1) NORTH CAROLINA GENERAL STATUTE SECTION 160A-174, which grants the Town of Madison general ordinance making power; (2) NORTH CAROLINA GENERAL STATUTE SECTION 160A-175, which grants the Town of Madison authority to enforce its ordinances; (3) NORTH CAROLINA GENERAL STATUTE SECTION 160A-381, which grants the Town of Madison authority to adopt zoning and development regulation ordinances to promote health, safety, morals, or the general welfare, including authority to adopt temporary moratoria.

Section 8. Establishment of Moratorium

There is hereby established a two year moratorium on any approval required by the Town of Madison Zoning Ordinance for Hydraulic Fracturing and/or Oil and Gas Development activities. It shall be unlawful and a violation of this Ordinance for any person within the jurisdiction to which this Ordinance applies to engage in Hydraulic Fracturing and/or Oil or Gas Development activities that require a Town of Madison permit. The Town of Madison Board of Aldermen will use this two year moratorium period to study the impacts of oil and gas development activities in other states and develop a plan to regulate and mitigate impacts from these activities that are not adequately addressed by state and federal laws and regulations, the existing Town of Madison Zoning Ordinance, and other ordinances, giving consideration to the health and safety of the citizens of the Town of Madison and it's ETJ, and the protection of the environment and natural resources, and in particular the rivers and groundwater resources the Town of Madison.

Section 9. Enforcement and Penalties

1. This Ordinance may be enforced by any legal or equitable remedies available, including, but not limited to, injunctive relief.
2. Any person engaging in oil and gas development activities in violation of this Ordinance shall be guilty of a misdemeanor pursuant to NORTH CAROLINA GENERAL STATUTE SECTION 14-4, and shall be subject to a fine of \$500 per offense. Each day that a person continues to violate this Ordinance after receiving notice of violation shall be considered a separate offense.

Section 10. Moratorium Expiration

This Moratorium shall expire two years from the date of adoption of this Ordinance.

Section 11. Severability

If any portion of this Ordinance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.

Section 12. Effective Date

This Ordinance shall be in full force and effect from and after adoption.

Adopted this the 14th day of January, 2016.



Lanette F. Johnson
 Lanette F. Johnson, Town Clerk

BY: *David Myers*
 David Myers, Mayor