File #: 2010-0909, **Version:** 2

title
Ordinance supplementing the Pittsburgh Code, Title Six, Conduct, Article 1 Regulated Rights and actions, by adding Chapter 618 entitled Marcellus Shale Natural Gas Drilling.

body
Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Pittsburgh Code, Title Six, Conduct, Article 1 Regulated Rights and Actions, is hereby supplemented by adding Chapter 618 entitled Marcellus Shale Natural Gas Drilling, as follows:

TITLE SIX: CONDUCT
ARTICLE I: REGULATED RIGHTS AND ACTIONS
Ch. 601. Public Order
Ch. 602: Panhandling
Ch. 603. Reserved
Ch. 604. Curfew
Ch. 605. Safety
Ch. 606. River Safety and Boating
Ch. 607. Firearms, Ammunition and Other Weapons
Ch. 608. Youth Offender Work Corps
Ch. 609. Weeds and Grass
Ch. 611. Alarms
Ch. 613. Obscene and Sexual Materials
Ch. 614. Outdoor Storage of Furniture
Ch. 615. Public Nuisances
Ch. 616. Damaging, Defacing and Interfering With Property
Ch. 617. Smoking Pollution Control
Ch. 618. Marcellus Shale Natural Gas Drilling
Ch. 619. Refuse Collection and Recycling
Ch. 620. Graffiti
Ch. 621. Regulation of Pay Telephone
Ch. 622. Requirements for Temporary Excavations
Ch. 623: Public Safety at Health Care Facilities
Ch. 624: Lost and Stolen Firearms

CHAPTER 618: MARCELLUS SHALE NATURAL GAS DRILLING

618.01 Findings and intent
618.02 Definitions
618.03 Statements of law - rights of Pittsburgh residents and the natural environment
618.04 Statements of law - prohibitions and corporate legal services

618.05 Enforcement
618.06 Effective date and existing DEP permit holders
618.07 People's Right to Self-Government
618.08 Severability
618.089 Repealer

Whereas , this is an ordinance to protect the health, safety, and welfare of residents and neighborhoods of Pittsburgh by banning the commercial extraction of natural gas within the city; and

Whereas , this ordinance establishes a Bill of Rights for Pittsburgh residents and remove legal powers from gas extraction corporations within the City; and

Whereas, this Ordinance shall be known and may be cited as "Pittsburgh's Community Protection from Natural Gas Extraction Ordinance;" and

Whereas, this Ordinance is enacted pursuant to the inherent right of the residents of the City of Pittsburgh to govern their own community, including, without limitation, the Declaration of Independence's declaration that governments are instituted to secure the rights of people, and the Pennsylvania Constitution's recognition that "all power is inherent in the people."

618.01 FINDINGS AND INTENT

The City Council of Pittsburgh finds that the commercial extraction of natural gas in the urban environment of Pittsburgh poses a significant threat to the health, safety, and welfare of residents and neighborhoods within the City. Moreover, widespread environmental and human health impacts have resulted from commercial gas extraction in other areas. Regulating the activity of commercial gas extraction automatically means allowing commercial gas extraction to occur within the City, thus allowing the deposition of toxins into the air, soil, water, environment, and the bodies of residents within our City.

Meaningful regulatory limitations and prohibitions concerning Marcellus Shale natural gas extraction, along with zoning and land use provisions, are barred because they conflict with certain legal powers claimed by resource extraction corporations. The City Council recognizes that environmental and economic sustainability cannot be achieved if the rights of municipal majorities are routinely overridden by corporate minorities claiming certain legal powers.

The City Council believes that the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police powers that this municipality possesses. The City Council also believes that local legislation that embodies the interests of the community is mandated by the doctrine of the consent of the governed, and the right to local, community self-government. Thus, the City Council hereby adopts this ordinance, which bans commercial extraction of Marcellus Shale natural gas within the City of Pittsburgh, creates a Bill of Rights for the residents and communities of the City, and removes certain legal powers from gas extraction corporations operating within the City of Pittsburgh.

618.02 DEFINITIONS

(a) "Natural Gas" shall mean any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature or pressure conditions, and/or gaseous components or vapors occurring in or derived from

temperature or pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or natural gas.

(b) "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons.

~~(c) "Hydraulic fracturing" or "fracing" shall mean the process of pumping a fluid into a well at very high pressure to create cracks in the reservoir rock, sand or other material may be used to prop open the gaps created by fracing.~~

(~~d~~ **c**)"Corporations," for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers.

618.0 ~~2~~ 3 STATEMENTS OF LAW- RIGHTS OF PITTSBURGH RESIDENTS AND THE NATURAL ENVIRONMENT

(a) Right to Water **.** All residents, natural communities and ecosystems in Pittsburgh possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

(b) Rights of Natural Communities. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(c) Right to Self-Government. All residents of Pittsburgh possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

(d) People as Sovereign. The City of Pittsburgh shall be the governing authority responsible to, and governed by, the residents of the City. Use of the "City of Pittsburgh" Municipal Corporation by the sovereign people of the City to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and indefeasible right to self-governance in the community where they reside.

618.0~~3~~4 STATEMENTS OF LAW - PROHIBITIONS AND CORPORATE LEGAL PRIVILEGES

(~~e~~ **a**) It shall be unlawful for any corporation to engage in the extraction of ~~Marcellus Shale~~ natural gas within the City of Pittsburgh, **with the exception of gas wells installed and operating at the time of enactment of this Ordinance.**

~~Exceptions: Natural gas wells installed and operating at the time of enactment of this~~

~~Ordinance shall be exempt from the prohibition against the extraction of natural gas.~~

(~~f~~ **b**) Corporations in violation of the prohibition against natural gas extraction, or seeking to engage in natural gas extraction shall not have the rights of "persons" afforded by the United States and Pennsylvania Constitutions, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution.

(~~g~~ **c**) Corporations engaged in the extraction of natural gas shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Pittsburgh, or to challenge or overturn municipal ordinances adopted by the City Council of Pittsburgh.

(~~h~~ **d**) No permit, license, privilege or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance or deprive any City resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Pittsburgh.

618.04~~5~~5 ENFORCEMENT

(a) Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by a district justice, shall be sentenced to pay the maximum fine allowable under State law for that violation, and shall be imprisoned to the extent allowed by law. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

(b) The City of Pittsburgh may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Allegheny County. In such an action, the City of Pittsburgh shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any City resident shall have the authority to enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Allegheny County. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

618.05~~5~~6 EFFECTIVE DATE AND EXISTING DEP PERMIT HOLDERS

(a) This Ordinance shall be effective upon the mayors signature or (10) days after the date of its enactment, at which point the Ordinance shall apply to any and all commercial extractions of natural gas in Pittsburgh regardless of the day of any applicable DEP permits.

618.05~~6~~7 PEOPLE'S RIGHT TO SELF-GOVERNMENT

(a) The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the City Council to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect

explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Ordinance or other levels of government used to intimidate the people of the City of Pittsburgh or their elected officials.

618.0~~6~~8 SEVERABILITY

(a) The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The City Council of Pittsburgh hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

618.0~~7~~9 REPEALER

(a) All inconsistent provisions of prior Ordinances adopted by the City of Pittsburgh are hereby repealed, but only to the extent necessary to remedy the inconsistency.

NOTE: I do hereby certify that the foregoing resolution duly engrossed and certified, was delivered by me to the Mayor for his approval or disapproval and that the Mayor failed to approve or disapprove the same, whereupon it became a law without his approval under the provisions of the Act of Assembly in such case made and provided. Linda M. Johnson-Wasler, City Clerk

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