

Borough of Jefferson Hills, Allegheny County, Pennsylvania
Ordinance No. _____ of 2010

AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF RESIDENTS AND NEIGHBORHOODS OF JEFFERSON HILLS BY BANNING THE COMMERCIAL EXTRACTION OF NATURAL GAS WITHIN THE BOROUGH; ESTABLISHING A BILL OF RIGHTS FOR JEFFERSON HILLS RESIDENTS; AND REMOVING LEGAL POWERS FROM GAS EXTRACTION CORPORATIONS WITHIN THE BOROUGH

Section 1—Name

This Ordinance shall be known and may be cited as “Jefferson Hills’s Community Protection from Natural Gas Extraction Ordinance.”

Section 2—Authority

This Ordinance is enacted pursuant to the inherent right of the residents of the Borough of Jefferson Hills 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.”

Section 3—Findings and Purpose

Whereas, the Borough Council of Jefferson Hills finds that the commercial extraction of natural gas in the urban environment of Jefferson Hills poses a significant threat to the health, safety, and welfare of residents and neighborhoods within the Borough; and

Whereas, the Borough Council finds that widespread environmental and human health impacts have resulted from commercial gas extraction in other areas, and

Whereas, the Borough Council finds that regulating the activity of commercial gas extraction automatically means allowing commercial gas extraction to occur within the Borough, thus allowing the deposition of toxins into the air, soil, water, environment, and the bodies of residents within our Borough; and

Whereas, the Borough Council finds that meaningful regulatory limitations and prohibitions concerning natural gas extraction, along with zoning and land use provisions, are barred because they conflict with certain legal powers claimed by resource extraction corporations; and

Whereas, the Borough 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; and

Whereas, the Borough 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; and

Whereas, the Borough Council 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;

Therefore, the Borough Council hereby adopts this ordinance, which bans commercial extraction of natural gas within the Borough of Jefferson Hills, creates a bill of rights for the residents and communities of the Borough, and removes certain legal powers from gas extraction corporations operating within the Borough of Jefferson Hills.

Section 4- Statements of Law – Rights of Jefferson Hills Residents and the Natural Environment

Section 4.1: Right to Water. All residents, natural communities and ecosystems in Jefferson Hills 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 Borough.

Section 4.2: 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 Borough of Jefferson Hills. Residents of the Borough shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

Section 4.3: Right to Self-Government. All residents of Jefferson Hills 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.

Section 4.4: People as Sovereign. The Borough of Jefferson Hills shall be the governing authority responsible to, and governed by, the residents of the Borough. Use of the “Borough of Jefferson Hills” municipal corporation by the sovereign people of the Borough 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 inalienable right to self-governance in the community where they reside.

Section 5-Statements of Law – Prohibitions and Corporate Legal Privileges

Section 5.1. It shall be unlawful for any corporation to engage in the extraction of natural gas within the Borough of Jefferson Hills. “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons. “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 petroleum or natural gas.

Section 5.2. 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. “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.

Section 5.3. 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 Borough of Jefferson Hills, or to challenge or overturn municipal ordinances adopted by the Borough Council of Jefferson Hills.

Section 5.4. 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 Borough 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 Borough of Jefferson Hills.

Section 6—Enforcement

Section 6.1: 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.

Section 6.2: The Borough of Jefferson Hills 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 Borough of Jefferson Hills shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 6.3: Any Borough 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.

Section 7—Effective Date and Existing DEP Permitholders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all commercial extractions of natural gas in Jefferson Hills regardless of the date of any applicable DEP permits.

Section 8—People's Right to Self-Government

Section 8.1. 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 Borough Council to hold public meetings that 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 Borough of Jefferson Hills or their elected officials.

Section 9—Severability

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 Borough Council of Jefferson Hills 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.

Section 10—Repealer

All inconsistent provisions of prior Ordinances adopted by the Borough of Jefferson Hills are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ____ day of _____, 2010, by the Borough Council of Jefferson Hills.

By: _____