

THE CITY OF OBERLIN COMMUNITY BILL of RIGHTS and OBLIGATIONS ORDINANCE:

AN ORDINANCE ESTABLISHING A COMMUNITY BILL OF RIGHTS FOR THE PEOPLE AND NATURAL COMMUNITIES OF THE CITY OF OBERLIN; PROTECTING THOSE RIGHTS BY PROHIBITING GAS AND OIL EXTRACTION AND RELATED ACTIVITIES; AND SUBORDINATING THE PRIVILEGES BESTOWED ON CERTAIN CORPORATIONS TO THE RIGHTS AND GOVERNANCE OF THE PEOPLE

SECTION 1: PREAMBLE

Whereas, this Ordinance establishes a Community Bill of Rights which recognizes and secures the civil and political rights of the people of the City of Oberlin, pursuant to Article I, Section 20 of the Ohio Constitution which states: “This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers, not herein delegated, remain with the people;” and

Whereas, Article 1, Section 1 of the Ohio Constitution states that “All men are free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety” and

Whereas, The Ohio Revised Code, Title VII, Chapter 743, Section 25 states (in part): “No person shall pollute a running stream, the water of which is used for domestic purposes by a municipal corporation, by putting therein a putrid or offensive substance, injurious to health. The director of public service of a city or board of trustees of public affairs of a village shall enforce this section. The jurisdiction of a municipal corporation to prevent the pollution of its water supply and to provide a penalty therefore shall extend twenty miles beyond the municipal corporation limits;” and

Whereas, this Ordinance bans the extraction of gas and oil, along with associated activities, including the disposal of associated wastes; into injection wells within the City and its jurisdiction, because these activities violate the civil rights of the people of the City of Oberlin by threatening the health, safety, and welfare of the people, environment and neighborhoods of Oberlin; and

Whereas, this Ordinance removes legal powers and authority from gas and oil extraction corporations when those corporations violate its prohibitions, in recognition that those legal powers are illegitimate and unjust, in that they place the rights of a corporate minority over the rights and political authority of a majority of the people of The City of Oberlin ; and

Whereas, this Ordinance shall be known and may be cited as the “The City of Oberlin Community Bill of Rights and Obligations Ordinance;” and

Whereas, this Ordinance is enacted pursuant to the inherent right of the people of the City of Oberlin to govern their own community, including, without limitation, the Declaration of Independence’s recognition that governments are instituted to secure the rights of people, and the Ohio Constitution’s recognition that “All political power is inherent in the people.”

NOW, THEREFORE, BE IT RESOLVED by the people of the City of Oberlin, that we electors hereby adopt the following Ordinance, which establishes a Bill of Rights for the people, environment and communities of the City, bans corporate extraction of gas and oil within the City of Oberlin and its jurisdiction because that extraction and that waste disposal cannot be achieved without violating the rights of the people, environment and communities within the City by endangering their health, safety, and welfare; removes certain legal powers from gas and oil extraction corporations operating within the City of Oberlin; secures rights that supersede state laws, permits, and other authorizations which interfere with the rights secured by this ordinance; and imposes liabilities and fines for violations thereof.

SECTION 2: FINDINGS AND INTENT

The people of the City of Oberlin find that the corporate extraction of gas and oil, the procurement of fresh water from the watershed for such purposes, and the disposal of associated wastes in the City of Oberlin and its jurisdiction, violates the rights of the people, environment and neighborhoods by posing a significant threat to their health, safety, and welfare. It is further recognized that widespread environmental and human health impacts have resulted from gas and oil extraction in other areas. Regulation of corporate gas and oil extraction automatically means allowing corporate gas and oil extraction to occur within the City of Oberlin, thus violating the rights of the people, environment and neighborhoods and endangering their health, safety, and welfare by allowing the deposit of toxins into the air, soil, water, environment, and the bodies of people within our City.

Meaningful regulatory limitations and prohibitions on corporate gas and oil extraction, along with effective zoning and land use provisions, are currently barred because they conflict with certain legal powers claimed by oil and gas extraction corporations. The people of the City of Oberlin recognize 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 people of the City of Oberlin also recognize that sustainability cannot be achieved within a system of preemption which enables those corporations to use state governments to override local self-government, and which restricts municipalities to only that lawmaking specifically authorized by state government.

The People believe 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 people of the City of Oberlin hereby adopt this

Ordinance, which establishes a Bill of Rights for the people, environment and communities of the City, and which bans the corporate extraction of gas and oil within The City of Oberlin, along with associated activities, because that extraction and those activities cannot be achieved without violating the rights of the people, environment and communities by endangering their health, safety, and welfare. This Ordinance also removes certain legal powers from gas and oil extraction corporations operating within The City of Oberlin, while subordinating state laws, permits, and other authorizations to the rights secured by this ordinance.

SECTION 3: DEFINITIONS

- (a) "Chemical Trespass" shall mean the involuntary deposition of toxic or potentially toxic substances within a human body, natural community or ecosystem.
- (b) "Corporation" for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, other business entity, or limited liability company organized under the laws of any state of the United States or under the laws of any country.
- (c) "Disposal" shall include, but not be limited to, the depositing, storage, treatment, recycling, injection, or by any other means, the distribution or depositing of brine, produced water, frack water, tailings or any other waste or by-product of corporate gas or oil extraction upon, into, or onto the land, waterways, air or any area within the jurisdiction of the City of Oberlin.
- (d) "Ecosystem" shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as naturally occurring habitats that sustain humans, wildlife, flora and fauna, and soil-dwelling or aquatic organisms.
- (e) "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing, or producing gas or oil or other hydrocarbons.
- (f) "Extraction, Production and Delivery Infrastructures" shall mean, but not be limited to, pipelines, processing facilities, waste storage structures, compressors, or storage and transportation facilities used to support the corporate extraction, production or distribution of gas or oil. The term shall not apply to the construction, maintenance or repair of infrastructures used for delivery to residential or business retail end-users of gas or oil.
- (g) "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 so-called "natural" gas.
- (h) "Natural Communities" shall mean wildlife, flora, fauna, soil-dwelling and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within an ecosystem.
- (i) "Oil" shall mean any petroleum or fossil fuel substance in a liquid, slurry or viscous state found naturally within subterranean geological formations.
- (j) "Procurement of fresh water," for purposes of this law, shall include the drawing of fresh water from anywhere within the City of Oberlin or its jurisdiction for the purpose of exploring for, or extraction of, gas and oil.
- (k) "Toxic Substances and Potentially Toxic Substances," for purposes of this Ordinance, shall include chemicals or chemical compounds, sludge and waste, radioactive ores, mine tailings, millings, waste liquors and radioactive progeny, particulate matter and/or gasses, that have been found to cause adverse effects to animals, humans, or ecosystems, including those chemicals, chemical compounds, sources of radiation, and all other substances deemed to be mutagenic, neurotoxic, carcinogenic, teratogenic, reproductive or developmental toxicants, or any other toxic chemical or hazardous substance identified by the City of Oberlin Council by resolution subject to this Ordinance. The phrase shall specifically include, but shall not be limited to, frack water and materials used in, and resulting from, the extraction of gas or oil.

SECTION 4: STATEMENTS OF LAW – RIGHTS OF THE PEOPLE OF OBERLIN AND THE NATURAL ENVIRONMENT

The rights secured here are not mere privileges; they are obligations justly placed on government and on each member of the community to respect freedoms held individually and collectively by every member of the community. The protection of these rights constitutes the highest and best use of the police powers that this municipality possesses.

- (a) *Right to Community Self-Government.* All people of the City of Oberlin 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.
- (b) *People as Sovereign.* The City of Oberlin shall be the governing authority responsible to, and governed by, the people of the City. Use of the "City of Oberlin" 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.
- (c) *Right to Clean Water.* All people, natural communities and ecosystems in the City of Oberlin 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.

- (d) *Right to Clean Air.* All people, natural communities and ecosystems in the City of Oberlin possess a fundamental and inalienable right to breathe air untainted by toxins, carcinogens, particulates and other substances known to cause harm to health.
- (e) *Right to Peaceful Enjoyment of Home.* The people of the City of Oberlin possess a fundamental and inalienable right to the peaceful enjoyment of their homes, free from interference, intrusion, nuisances or impediments to access and occupation.
- (f) *Right to be Free from Chemical Trespass.* All people, natural communities and ecosystems in the City of Oberlin possess a fundamental and inalienable right to be free from chemical trespass resulting from the extraction of gas or oil.
- (g) *Rights of Natural Communities.* Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the City of Oberlin. The people of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.
- (h) *Right to a Sustainable Energy Future.* The people of the City of Oberlin possess a fundamental and inalienable right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable and sustainable fuel sources, and the right to establish local sustainable energy policies to further secure this right.

SECTION 5: STATEMENTS OF LAW – PROHIBITIONS AND CORPORATE LEGAL PRIVILEGES

- (a) It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to engage in the extraction of gas or oil within the City of Oberlin, with the exception of gas and oil wells installed and operating at the time of enactment of this Ordinance, provided that the extraction of gas or oil from those existing wells does not involve any practice or process not previously used for the extraction of gas or oil from those wells at the time of the enactment of this Ordinance, and provided that those wells are capped securely when production ceases.
- (b) It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to deposit, store or transport waste water, produced water, frack water, brine or other materials, chemicals or by-products used in the exploration for, or extraction of, gas or oil, within, upon or through the land, air or waters of the City of Oberlin.
- (c) It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to engage in the siting of extraction, production and delivery infrastructures within the City of Oberlin.
- (d) Corporations, and persons using corporations, to engage in gas or oil extraction in a neighboring municipality, county or state shall be strictly liable for all harms caused to natural water sources, ecosystems, human and natural communities within the City of Oberlin and for the violation of the rights herein secured.
- (e) 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 natural person, natural community, or ecosystem within the City of Oberlin of any rights, privileges, or immunities secured by this Ordinance, the Ohio Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Oberlin.

SECTION 6: LEGAL ENFORCEMENT

- (a) Any person or corporation that violates any prohibition of this Ordinance shall be guilty of a criminal offense and, upon conviction thereof, 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 Oberlin may also enforce this Ordinance through an action in equity. In such an action, the City of Oberlin shall be entitled to recover, without limitation, all costs of litigation, including, but not limited to, expert and attorney's fees.
- (c) Any natural person who is a resident of the City of Oberlin shall have the authority to enforce this Ordinance through an action in equity. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.
- (d) Any natural person who brings an action to secure or protect the rights of natural communities or ecosystems within the City of Oberlin shall bring that action in the name of the natural community or ecosystem in a court of competent jurisdiction. Damages shall be measured by the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid to the City of Oberlin or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem. Any natural person or group of natural persons shall have standing to bring an action on behalf of affected natural communities or ecosystems, regardless of the lack of a property relationship between those persons and the affected communities or ecosystems.
- (e) Corporations in violation of the prohibitions enacted by this Ordinance, or seeking to engage in activities prohibited by this Ordinance, shall not have the rights of "persons" afforded by the United States and Ohio Constitutions, nor shall those corporations be afforded rights under the 1st or 5th Amendments to the United States Constitution or corresponding sections of the Ohio Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Ohio Constitution.
- (f) Corporations in violation of the prohibitions enacted by this Ordinance, or seeking to engage in activities prohibited by this Ordinance, shall not possess the authority or power to enforce State or Federal preemptive law against the people of the City of Oberlin, or to challenge or overturn municipal ordinances adopted by the City of Oberlin, when that enforcement or challenge interferes with the rights asserted by this ordinance or interferes with the authority of the municipality to protect the health, safety, and welfare of the people or environment of the City of Oberlin.

SECTION 7: PEOPLE'S RIGHT TO SELF-GOVERNMENT

The foundation for the making and adoption of this Ordinance is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness and safety. 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 the people of the City to protect their fundamental and inalienable right to self-government.

SECTION 8: SEVERABILITY

The provisions of this Law 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 People of Oberlin hereby declare that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Law even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

SECTION 9: REPEALER

All inconsistent provisions of prior Laws adopted by the City of Oberlin are hereby repealed, but only to the extent necessary to remedy the inconsistency.

SECTION 10: EFFECTIVE DATE

This Law shall take effect five days after the day on which the board of elections certifies the official vote on the question, at which point this Law shall apply to any and all extraction of gas and oil and related activities in the City of Oberlin or its jurisdiction regardless of the date of any applicable State or Federal permits.