

Forest Hills Borough, Allegheny County, Pennsylvania Ordinance No. _____ of 2011

Whereas, this ordinance establishes a Bill of Rights which recognizes and secures the civil and political rights of Forest Hills residents; and

Whereas, this ordinance then bans the commercial extraction of or exploration for natural gas within the Borough because that extraction or exploration violates the civil rights of Forest Hills residents, and because it threatens the health, safety, and welfare of residents, natural communities and neighborhoods of Forest Hills; and

Whereas, this ordinance removes legal powers and authority from gas extraction corporations within the Borough, 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 Forest Hills Borough residents; and

Whereas, this Ordinance shall be known and may be cited as “Forest Hills Borough’s Community Rights and Protection from Natural Gas Exploitation Ordinance;” and

Whereas, this Ordinance is enacted pursuant to the inherent right of the residents of Forest Hills Borough 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 1—Findings and Intent

The Borough Council finds that the commercial extraction of and exploration for natural gas in Forest Hills Borough violates the rights of residents, neighborhoods, and natural communities, and poses a significant threat to their health, safety, and welfare. Moreover, widespread environmental and human health impacts have resulted from commercial gas extraction and exploration in other areas. The regulation of commercial gas development de facto allows commercial gas development to occur; the impacts of development endanger the health and violate the rights of residents, neighborhoods, and natural communities through deposition of toxins into the air, soil, water, environment and bodies of residents of the Borough

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. The Borough Council also recognizes 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 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. The Borough 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 Borough Council hereby adopts this ordinance, establishing a Bill of Rights for the human and natural communities of the Borough, banning commercial extraction of and exploration for natural gas within Forest Hills Borough, removing certain legal powers from gas extraction corporations operating within Forest Hills Borough, and

nullifying state laws, permits, and other authorizations which interfere with the rights secured by this ordinance.

Section 2—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 petroleum or natural gas.

(b) “Extraction” shall mean the digging, drilling or operation of a well for the purpose of exploring for, developing, removing or producing natural gas or other hydrocarbons, as well as the construction or siting of compressor stations, new pipelines, waste water pits or confinement pits, condensation tanks or any structure, process, or ancillary facility, dwelling or vehicle employed in the extraction of or exploration for natural gas. The term shall also include the treatment, confinement or transportation of “produced water.”

(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.

Section 3---Statements of Law – Rights of Newton Residents and the Natural Environment

(a) *Right to Water.* All residents, natural communities and ecosystems in Forest Hills Borough 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.

(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 Forest Hills Borough. Residents of the Borough, along with the municipality, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(c) *Right to a Sustainable Energy Future.* All residents, natural communities, and ecosystems in Forest Hills Borough possess a right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable fuel sources.

(d) *Right to Self-Government.* All residents of Forest Hills Borough 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---Statements of Law – Prohibitions Necessary to Secure Bill of Rights’ Protections

(a) It shall be unlawful for any corporation to engage in the extraction of natural gas within Forest Hills Borough, with the exception of gas wells and pipelines already installed and operating at the time of enactment of this Ordinance, provided that the extraction of gas from

those existing wells does not involve any practice or process not previously used for the extraction of gas from those wells.

(b) It shall be unlawful for any corporation to extract water from any source, whether surface or subsurface, within Forest Hills Borough, for use in the extraction of subsurface natural gas. It shall be unlawful for a corporation to import water into Forest Hills Borough for use in the extraction of subsurface natural gas. It shall be unlawful for any corporation to deposit waste water, “produced” water, “frack” water, brine or other materials or by-products of natural gas extraction activities, into the land, air or waters within Forest Hills Borough or within its external jurisdiction.

(c) Corporations and persons using corporations to engage in natural gas 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 Forest Hills Borough and its jurisdiction.

(d) 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 rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the Pennsylvania 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 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.

(e) 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 Forest Hills Borough, or to challenge or overturn municipal ordinances adopted by the Borough Council of Forest Hills, 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 its residents.

(f) No permit, license, privilege or charter issued by any State or federal agency, Commission or Council 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 Forest Hills Borough.

Section 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) Forest Hills Borough may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Allegheny County. In such an action, Forest Hills Borough shall be entitled to recover, without limitation, all costs of litigation, including, but not limited to, expert and attorney’s fees.

(c) 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 6—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 extractions of natural gas regardless of the date of any applicable DEP permits.

Section 7—People's Right to Self-Government

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 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.

Section 8—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 Forest Hills Borough 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 9—Repealer

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

ENACTED AND ORDAINED this ____ day of _____, 2011, by the Borough Council of Forest Hills.