

CITY OF BROADVIEW HEIGHTS, OHIO

ORDINANCE NO. 115-12

**INTRODUCED BY
MAYOR AND ENTIRE COUNCIL**

**AN ORDINANCE PROVIDING FOR THE SUBMISSION TO THE
ELECTORATE OF AN AMENDMENT TO THE BROADVIEW HEIGHTS
CHARTER TO ADD A COMMUNITY BILL OF RIGHTS WHICH BANS MOST
COMMERCIAL OIL AND NATURAL GAS EXTRACTION AS WELL AS THE
STORAGE, TRANSPORTATION OR DEPOSITING OF OIL AND GAS DRILLING
WASTE PRODUCTS WITHIN THE CITY OF BROADVIEW HEIGHTS,
AND DECLARING AN EMERGENCY.**

WHEREAS, Article XII, Section 2 of the Charter of the City of Broadview Heights provides that an amendment to the Charter may be placed on the ballot upon petition signed by not less than ten percent (10%) of the electors of the Municipality setting forth any proposed amendment to the Charter of the City of Broadview Heights.

WHEREAS, a petition to amend the Charter of the City of Broadview Heights pursuant to Article XII, Section 2 of the Charter of the City of Broadview Heights has been presented to City Council for submission of such proposed amendment to the electors of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BROADVIEW HEIGHTS, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. The Broadview Heights Charter shall be, and the same is hereby ordered, amended to the following:

COMMUNITY BILL OF RIGHTS

- a. **Right to Pure Water.** All residents, natural communities and ecosystems the City of Broadview Heights 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. **Right to Clean Air.** All residents, natural communities and ecosystems in The City of Broadview Heights possess a fundamental and inalienable right to breathe air untainted by toxins, carcinogens, particulates and other substances known to cause harm to health.

- c. **Right to Peaceful Enjoyment of Home.** Residents of The City of Broadview Heights possess fundamental and inalienable right to the peaceful enjoyment of their homes, free from interference, intrusion, nuisances or impediments to access and occupation.
- d. **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 Broadview Heights. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.
- e. **Right to a Sustainable Energy Future.** All residents in The City of Broadview Heights possess a 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.
- f. **Right to Self-Government.** All residents of The City of Broadview Heights 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.
- g. **People as Sovereign.** The City of Broadview Heights shall be the governing authority responsible to, and governed by, the residents of the City. Use of the "City of Broadview Heights" 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.
- h. **Right as Self-Executing.** All rights delineated and secured by this Charter shall be self-executing and these rights shall be enforceable against private and public entities.
- i. **Securing and Protecting Rights.** To further secure and protect the rights enumerated by the Bill of Rights.
 - 1. It shall be unlawful for any person or corporation to engage in the extraction of gas or oil within the City of Broadview Heights, with the exception of gas and oil wells installed and operating at the time of enactment of this Charter provision, provided that the extraction of gas or oil from those existing wells does not involve an practice or process not previously used for the extraction of

gas or oil from those wells and providing those wells are capped securely when production ceases.

2. It shall be unlawful for any person or 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 extraction of gas or oil, within, upon or through the land, air or waters of the City of Broadview Heights.
3. It shall be unlawful for any person or corporation, or any director, officer, owner, or manager of a corporation to use a corporation to engage in the creation of fossil fuel, nuclear or other non-sustainable energy production and delivery infrastructures, such as pipelines, processing facilities, compressors, or storage and transportation facilities of any sort that would violate the right to a sustainable energy future for the City of Broadview Heights.
4. 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 Broadview Heights.
5. Corporations in violation of the prohibition against gas and oil extraction, or seeking to engage in gas or oil extraction shall not have the right of “persons” afforded by the United States and Ohio Constitutions, nor shall those corporations be afforded the protections of the commerce or contracts clauses with the United States Constitution or corresponding sections of the Ohio Constitution.
6. Corporations engaged in the extraction of gas or oil shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Broadview Heights, or to challenge or overturn municipal ordinances or Charter provisions adopted by the City of Broadview Heights Council.
7. 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 Charter provision or deprive any City resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Charter, the Ohio Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Broadview Heights.
8. Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a summary offense and, upon conviction 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. Enforcement of this article may be initiated by the Broadview Heights Police Department, the Director of Public Safety, or other designee of City Council. Broadview Heights may also enforce this Ordinance through an action in equity. In such an action, Broadview Heights shall be entitled to recover damages and all costs of litigation, including limitation, expert and attorney's fees.

9. Any City resident shall have the authority to enforce this Ordinance through an action in equity. In such an action, the resident shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney's fees. Any person who brings an action to secure or protect the rights of natural communities or ecosystems within Broadview Heights 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 Broadview Heights or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.
10. The provision of this section are severable. If any court of competent jurisdiction decides that any sub-section, clause, sentence, part, of provision of this section is illegal, invalid, or unconstitutional, such decision shall not affect, impair or invalidate any of the remaining subsections, clauses, sentences, parts, or provisions of this Bill of Rights and its prohibitions. The people of the City of Broadview Heights hereby declare that in the event of such a decision, and the determination that the court's ruling is legitimate, they would have enacted this amendment even without the sub-section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional. All inconsistent provisions of prior Ordinances and zoning Ordinances adopted at any time by the City of Broadview Heights are hereby held in abeyance, but shall take immediate effect in the event this Bill of Rights and its protective prohibitions are overturned.

SECTION 2. The Board of Elections of Cuyahoga County is authorized and to be held on November 6, 2012 on the proposed amendment to the Charter of this City that is to be submitted pursuant to the Ordinance referred to in the preamble to this Ordinance and otherwise to provide for such election in the manner provided by the general laws of the State of Ohio.

SECTION 3. The Clerk of this Council is hereby authorized and directed to cause the full text of such proposed Charter Amendment to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the City of Broadview Heights,

with the first publication to be made at least fifteen (15) days prior to the regular municipal election to be held on November 6, 2012 as provided in Article XVIII, Section 9 of the Constitution of the State of Ohio and in Section 731.211 of the Ohio Revised Code.

SECTION 4. The ballot to be used in the election on the question of the adoption of such proposed amendment shall be substantially as follows:

**PROPOSED CHARTER AMENDMENT
CITY OF BROADVIEW HEIGHTS**

A majority affirmative vote is necessary for passage.

SHALL THE CHARTER OF THE CITY OF BROADVIEW HEIGHTS BE AMENDED TO ADD A COMMUNITY BILL OF RIGHTS WHICH BANS MOST COMMERCIAL OIL AND NATURAL GAS EXTRACTION AS WELL AS THE STORAGE, TRANSPORTATION OR DEPOSITING OF OIL AND GAS DRILLING WASTE PRODUCTS WITH THE CITY OF BROADVIEW HEIGHTS.

_____ FOR THE CHARTER AMENDMENT

_____ AGAINST THE CHARTER AMENDMENT

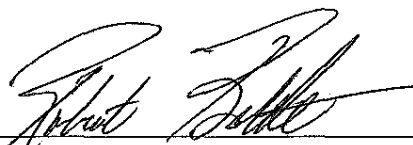
SECTION 5. There is hereby appropriated from the General Fund a sufficient sum of money to pay the costs of carrying out the authorizations and directions of this Ordinance.

SECTION 6. The Clerk of this Council is hereby authorized and directed promptly to forward a certified copy of this Ordinance to the Board of Elections of Cuyahoga County and to certify to the Ohio Secretary of State within thirty (30) days after the date of the election the text of such Charter Amendment if it is approved by a majority of the voters who vote on that amendment.

SECTION 7. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.


SECTION 8. This Ordinance is declared to be an emergency measure necessary for the preservation of the public peace, health, and safety for the reasons stated in the Preamble herein, and in that it is necessary that it become effective to make all required preparations immediately in order for the question of such proposed Charter Amendment to appear on the ballot at the regular municipal election to be held on the date provided for herein; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor as otherwise provided by law.

PASSED: Sept. 4, 2012



PRESIDENT OF COUNCIL

DATE FILED
WITH MAYOR: Sept. 4, 2012

APPROVED: 

SAMUEL J. ALAI, MAYOR

ATTEST: 

CLERK OF COUNCIL

DATE APPROVED: Sept. 4, 2012

PROPOSED CHARTER AMENDMENT
(By Petition)
CITY OF BROADVIEW HEIGHTS

A majority affirmative vote is necessary for passage

Shall Article II of the Charter of the City of Broadview Heights be amended to add a Community Bill of Rights which provides for the right to pure water, clean air, peaceful enjoyment of home, the existence of natural communities, a sustainable energy future and self government by banning most commercial oil and natural gas extraction as well as the storage, transportation or depositing of oil and gas drilling waste products within the city of Broadview Heights?

PROPUESTA DE ENMIENDA A LOS ESTATUTOS
(Por Petición)
CIUDAD DE BROADVIEW HEIGHTS

Se requiere un voto afirmativo por mayoría para su aprobación

¿Deberá enmendarse el Artículo II de los Estatutos de la Ciudad de Broadview Heights para añadir una Declaración de Derechos de la Comunidad la cual dispone el derecho a tener agua pura, aire limpio, gozo de tranquilidad en el hogar, la existencia de comunidades naturales, un futuro de energía sostenible y autogobierno mediante la prohibición de la mayor parte de la extracción de petróleo comercial y gas natural así como el almacenamiento, transporte o depósito de los productos residuales de la perforación de petróleo y gas dentro de la Ciudad de Broadview Heights?

SPECIAL ELECTION BY PETITION
~~Local Liquor Option~~
~~Sunday Sales~~

~~A majority affirmative vote is necessary for passage~~

~~Shall the sale of wine and mixed beverages and spirituous liquor be permitted for sale on Sunday between the hours of ten a.m. and midnight by Edeor Inc., dba Ramble Inn, an applicant for a D-6 liquor permit and holder of D-2, D-3, D-3a liquor permits, who is engaged in the business of a neighborhood tavern and grill at 8151 Broadview Road and Patio, Broadview Heights, OH 44147 in this precinct?~~

ELECCIÓN ESPECIAL POR PETICIÓN
~~Opción Local de Licor~~
~~Ventas los Domingos~~

~~Se requiere un voto afirmativo por mayoría para su aprobación~~

~~¿Deberá permitirse a Edeor Inc., haciendo negocio como Ramble Inn, solicitante de un permiso D-6 para licor y poseedor de los permisos D-2, D-3, D-3a para licor, quien opera una taberna y parrilla de vecindario en 8151 Broadview Road and Patio, Broadview Heights, OH 44147, la venta de vino y bebidas combinadas y licores destilados los domingos entre las horas de diez de la mañana hasta la medianoche en este distrito electoral?~~

(WITH 1 OF 1 PRECINCTS COUNTED)

YES	490	77.29
NO.	144	22.71
Over Votes	1	
Under Votes	57	

28 - Broadview Hts Proposed Ch Am 11.02
Vote for not more than 1

(WITH 15 OF 15 PRECINCTS COUNTED)

YES	5,674	58.80
NO.	3,975	41.20
Over Votes	4	
Under Votes	920	

29 - Broadview Hts Charter Amendment
Vote for not more than 1

(WITH 15 OF 15 PRECINCTS COUNTED)

YES	6,406	66.37
NO.	3,246	33.63
Over Votes	7	
Under Votes	914	

30 - Broadview Hts.1-A Local Liquor Op
Vote for not more than 1

(WITH 1 OF 1 PRECINCTS COUNTED)

YES	549	67.78
NO.	261	32.22
Over Votes	0	
Under Votes	68	

32 - Brook Park Ch Am 8.04 & 8.05
Vote for not more than 1

(WITH 13 OF 13 PRECINCTS COUNTED)

YES	2,936	35.70
NO.	5,289	64.30
Over Votes	5	
Under Votes	631	

33 - Brook Park Ch Am 12, 15 & 16.02
Vote for not more than 1

(WITH 13 OF 13 PRECINCTS COUNTED)

YES	2,794	35.72
NO.	5,027	64.28
Over Votes	3	
Under Votes	1,037	

34 - Brook Park -03- B Local Option
Vote for not more than 1

(WITH 1 OF 1 PRECINCTS COUNTED)

YES	398	57.68
NO.	292	42.32
Over Votes	0	
Under Votes	81	

35 - Brooklyn 00- G Local Liquor Option
Vote for not more than 1

(WITH 1 OF 1 PRECINCTS COUNTED)

YES	388	62.88
NO.	229	37.12
Over Votes	0	
Under Votes	134	