

VILLAGE OF YELLOW SPRINGS, OHIO

Ordinance #2012-17

AN ORDINANCE ESTABLISHING A COMMUNITY BILL OF RIGHTS FOR YELLOW SPRINGS RESIDENTS AND NATURAL COMMUNITIES AND PROTECTING THOSE RIGHTS BY PROHIBITING GAS AND OIL EXTRACTION, PLACEMENT OF INJECTION WELLS AND RELATED ACTIVITIES; AND BY SUBORDINATING THE PRIVILEGES BESTOWED ON CORPORATIONS TO THE RIGHTS AND GOVERNANCE OF THE PEOPLE

SECTION 1- PREAMBLE

Whereas: The drinking water supply for Yellow Springs comes from an unconfined aquifer, characterized by layers of loose sediment, no surface barrier, and is recharged (primarily) by rain that percolates down through the ground and to a lesser degree by the Little Miami River; and

Whereas: The Village of Yellow Springs drinking water supply is identified as a sole source aquifer, and as such is protected by the Sole Source Aquifer Protection Program authorized by (Section 1424e of) the Safe Drinking Water Act of 1974; and

Whereas: The Energy Policy Act 2005 allows the Oil and Gas Industry exemption from rules and regulations of the Safe Drinking Water Act without showing evidence this exemption from general law will not violate rights; and

Whereas: the aquifer that feeds the Village of Yellow Springs is considered to be at high risk for contamination according to a 2003 EPA Susceptibility Report; and

Whereas: many communities across the nation have already experienced contamination of their streams, lakes, rivers and other sources of drinking water as a result of fracking and placement of injection wells; and

Whereas: oil and gas companies have identified Yellow Springs and surrounding environs as 'geologically appropriate' for injection wells due to the presence of Mt Simon Sandstone; and

Whereas: Ohio and other states have experienced earthquakes in relation to the placement of injection wells; and

Whereas: this ordinance establishes a Community Bill of Rights which recognizes and secures the civil and political rights of Yellow Springs residents, 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: the Ohio Revised Code, Title VII, Chapter 743, Section 25 titled "Jurisdiction of municipal corporations to prevent water pollution" states that "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;" and

Whereas: this ordinance bans the extraction of gas and oil within the Village or the placement of injection wells, along with associated activities, because that extraction violates the civil rights of Yellow Springs residents, and because it threatens the health, safety, and welfare of residents and neighborhoods of Yellow Springs; and

Whereas: this ordinance removes legal powers and authority from gas and oil extraction corporations within the Village, 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 Yellow Springs Village residents; and

Whereas: this Ordinance shall be known and may be cited as “Yellow Springs’ Community Protection from Gas and Oil Extraction Ordinance;” and

Whereas: this Ordinance is enacted pursuant to the inherent right of the residents of Yellow Springs Village 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 Ohio Constitution’s recognition that “All political power is inherent in the people.”

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Yellow Springs Village Council, that we hereby adopt the following ordinance, which establishes a Bill of Rights for the residents and communities of the Village, bans commercial extraction of gas and oil or the placement of injection wells within Yellow Springs Village because those actions cannot be achieved without violating the rights of residents and communities or endangering their health, safety, and welfare; removes certain legal powers from gas and oil extraction corporations operating within Yellow Springs Village; nullifies illegitimate 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 Village Council of Yellow Springs finds that the commercial extraction of gas and oil and the placement of injection wells in Yellow Springs Village violates the rights of residents and neighborhoods, and poses a significant threat to their health, safety, and welfare. Moreover, widespread environmental and human health impacts have resulted from commercial gas and oil extraction and injection wells in other areas. Regulating these activities of commercial gas and oil extraction or injection well placement is not a solution as it automatically means allowing commercial gas and oil extraction to occur within the Village, thus violating the rights of residents 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 residents within our Village.

Meaningful regulatory limitations and prohibitions concerning gas and oil extraction, along with zoning and land use provisions, are barred because they conflict with certain legal powers claimed by resource extraction corporations. The Village 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 Village 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 Village 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 Village 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 Village Council hereby adopts this ordinance, which establishes a Bill of Rights for the residents and communities of the Village, and which bans the extraction of gas and oil and any storage of frack waste within Yellow Springs Village, along with associated activities, because that extraction and those activities cannot be achieved without violating the rights of residents and communities or endangering their health, safety, and welfare, and which removes certain legal powers from gas and oil extraction corporations operating within Yellow Springs Village, while nullifying state laws, permits, and other authorizations which interfere with the rights secured by this ordinance.

SECTION 3 – DEFINITIONS

(a) “Corporation,” for purposes of this law, 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.

(b) “Individual” means any natural person.

(c) “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.

(d) “Extraction, Production and Delivery Infrastructures” shall mean, but not be limited to, pipelines, processing facilities, compressors, as well as anything used for storage or transportation of gas and oil extracted using extraction processes.

(e) “Production Activities” shall include, but not be limited to, the siting of compressors; drill rigs; pipelines; waste water storage, treatment or processing facilities; temporary housing; and any extraction, production or delivery infrastructures related to or supporting extraction of gas and oil.

SECTION 4 - STATEMENTS OF LAW – RIGHTS OF YELLOW SPRINGS RESIDENTS AND THE NATURAL ENVIRONMENT

(a) Right to Water. All residents, natural communities and ecosystems in Yellow Springs possess a fundamental and inalienable right to maintain the sustainable access, use, consumption, and preservation of water drawn from natural water systems, springs and wells that provide water necessary to sustain life within the Village.

(b) Rights of Natural Communities. Ecosystems and natural communities possess the right to exist and flourish within the Village. The residents of Yellow Springs have the inalienable right to enforce and defend those rights to protect all ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, within Yellow Springs.

(c) Right to a Sustainable Energy Future. All residents, natural communities, and ecosystems in Yellow Springs 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 and the establishment of local policies to advance this right.

(d) Right to Local Community Self-Government. All residents of Yellow Springs 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 neither individuals nor corporate entities and their directors and managers shall enjoy special privileges or powers under the color of state law which purports to make community majorities subordinate to them.

(e) People as Sovereign. Yellow Springs shall be the governing authority responsible to, and governed by, the residents of the Village. The people at all times enjoy and retain an inalienable and indefeasible right to self-governance in the community where they reside.

(f) Rights as Self-Executing. All rights delineated and secured by this law shall be self-executing and these rights shall be enforceable against individuals, corporations and governmental entities.

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 Yellow Springs.

(b) 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 or delivery infrastructures within Yellow Springs.

(c) It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to store, transport or process waste water, "produced" water, "frack" water, brine or other materials, chemicals or by-products used in the extraction of gas and oil extraction. It shall be unlawful for any corporation, or any person using a corporation to deposit those materials into the land, streets, air or waters within Yellow Springs.

(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 Law or deprive any Village resident(s), natural communities or ecosystems of any rights, privileges, or immunities secured by this Law, the Ohio Constitution, the United States Constitution, or other laws, shall be deemed valid within Yellow Springs.

(e) Corporations in violation of the prohibition against gas and oil extraction, or seeking to engage in gas or oil extraction 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 or individuals 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 Yellow Springs, or to challenge or overturn laws adopted by the Yellow Springs Village Council, when that enforcement or challenge interferes with the rights asserted by this law or interferes with the authority of the municipality to protect the health, safety, and welfare of its residents.

(g) It shall be unlawful for any individual to engage in the extraction of gas or oil, within Yellow Springs.

(h) It shall be unlawful for any individual to engage in the siting of extraction, production or delivery infrastructures within Yellow Springs.

(i) It shall be unlawful for any individual to store, transport or process waste water, “produced” water, “frack” water, brine or other materials, chemicals or by-products used in the extraction of gas and oil extraction. It shall be unlawful for any corporation, or any person using a corporation to deposit those materials into the land, streets, air or waters within Yellow Springs.

SECTION 6 - LEGAL 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 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) Enforcement of this article may be initiated by the Yellow Springs Police Department, the Director of Public Safety, or other designee of Village Council.

(c) Yellow Springs may also enforce this Ordinance through an action in equity. In such an action, Yellow Springs shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney’s fees.

(d) Any Village resident may pursue remedies at law or equity against any alleged violator of this ordinance; however, nothing in this ordinance shall be construed to give a resident or any other person the right to an action in law or equity (such a mandamus, or other similar action) against the Village.

(e) Any person who brings an action to secure or protect the rights of natural communities or ecosystems within Yellow Springs 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 Yellow Springs or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

SECTION 7 - PEOPLE’S RIGHT TO LOCAL COMMUNITY SELF-GOVERNMENT

The foundation for the making and adoption of this Law is the people's fundamental and inalienable right to govern themselves in the places where they live, and thereby secure their rights to life, liberty, and pursuit of happiness.

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 Law 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 Law. The Village Council of Yellow Springs 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 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 Yellow Springs are hereby repealed, but only to the extent necessary to remedy the inconsistency.

SECTION 10 - EFFECTIVE DATE

This Law shall take effect immediately upon adoption, at which point the Law shall apply to any and all extraction of gas and oil in Yellow Springs regardless of the date of any applicable State or Federal permits.

Signed: Judith Hempfling
Judith Hempfling, President of Council

Passed: 10-1-2012

Attest: Judy Kintner
Judy Kintner, Clerk of Council

ROLL CALL:

Judith Hempfling Y Lori Askeland Y Karen Wintrow N

Gerald Simms N Rick Walkey Y