

ATHENS COMMUNITY BILL OF RIGHTS AND WATER SUPPLY PROTECTION ORDINANCE:

An Ordinance Establishing A Community Bill Of Rights For Residents And Natural Communities Of Athens And Protecting Those Rights By Prohibiting Shale Gas And Oil Extraction And Related Activities; And By Elevating The Rights And Governance Of The People Of Athens Over Those Privileges Bestowed On Certain Extraction Corporations.

Section 1. Preamble

Whereas, this ordinance establishes a Community Bill of Rights which recognizes and secures the civil and political rights of Athens 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, 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, this ordinance bans the exploration for, and extraction of, shale gas and oil, along with associated activities, including the disposal of associated wastes, into injection wells within the City, because these activities violate the civil rights of Athens’ residents by threatening the health, safety, and welfare of residents and neighborhoods of Athens; and

Whereas, this ordinance removes legal powers and authority from extraction corporations when those corporations violate this ordinance’s 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 Athens residents; and Whereas, this Ordinance shall be known and may be cited as the “Athens Community Bill of Rights and Water Supply Protection Ordinance;” and

Whereas, this Ordinance is enacted pursuant to the inherent right of the residents of Athens City 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 HEREBY RESOLVED by the People of the City of Athens, that we hereby adopt the following ordinance, which establishes a Bill of Rights for the residents and communities of the City, bans commercial extraction of shale gas and oil within Athens City or the use of any City water because that extraction and use cannot be achieved without violating the rights of residents and communities by endangering their health, safety, and welfare; removes certain legal powers from gas and oil extraction corporations operating within the City of Athens; nullifies 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 Athens find that the extraction of shale gas and oil, the procurement of fresh water from within the City for such purposes, and the disposal of associated wastes in Athens City, violates the rights of residents 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 commercial gas and oil extraction automatically means allowing commercial gas and oil extraction to occur within the City, 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.

Meaningful regulatory limitations and prohibitions concerning shale gas and oil extraction, along with zoning and land use provisions, are currently barred because they conflict with certain legal powers claimed by resource extraction corporations. The People 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 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 the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police powers that this municipality possesses. The People also 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 Athens hereby adopt this ordinance, which establishes a Bill of Rights for the residents and communities of the City, and which bans the extraction of shale gas and oil within Athens City, along with associated activities, because that extraction and those activities cannot be achieved without violating the rights of residents and communities by endangering their health, safety, and welfare. The ordinance also removes certain legal powers from gas and oil extraction corporations operating within Athens City, while nullifying state laws, permits, and other authorizations which interfere with the rights secured by this ordinance.

Section 3. Statements Of Law – Rights Of Athens Residents And The Natural Environment

(a) Right to Potable Water. All residents, natural communities and ecosystems in the City of Athens 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 City.

(b) Right to a Healthy Environment. All residents of the City of Athens possess a fundamental and inalienable right to a healthy environment, which includes the right to clean air, water, soil, flora, and fauna, freedom from human-induced earthquakes, and the right to protect the rights of natural communities and ecosystems upon which each resident is both intrinsically a part and dependent.

(c) Right to be Free from Chemical Trespass. All residents, natural communities and ecosystems within the City of Athens possess a fundamental and inalienable right to be free from involuntary chemical trespass by any means, including but not limited to, trespass by manufactured chemicals, waste products and radioactive substances used in, or resulting from, the extraction of shale gas or oil.

(d) Rights of Natural Communities. Ecosystems and natural communities possess the right to exist and flourish. The residents of Athens have the inalienable right to enforce and defend those rights.

(e) Right to a Sustainable Energy Future. All residents, natural communities, and ecosystems in the City of Athens 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.

(f) Right to Self-Government. All residents of the City of Athens 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.

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

(h) Rights as Self-Executing. All rights delineated and secured by this law shall be self-executing and these rights shall be enforceable against private and public actors.

Section 4. Statements Of Law – Prohibitions And Corporate Legal Privileges

(a) It shall be unlawful for any corporation to engage in the exploration for, or extraction of, shale gas or oil within the City of Athens.

(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 the City of Athens related to the exploration for and extraction of shale gas or oil, but this prohibition shall not include the siting or repair of pipelines or infrastructure related to the delivery of shale gas or oil to end-users.

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

(d) 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 procurement of surface water from any source within the City, or treated water from the Athens City water treatment or distribution system, for the purpose of deep-well exploring for, or mining of, shale gas and oil within the City of Athens.

(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 Law or deprive any City resident(s), 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 Athens City.

Section 5. Legal Enforcement

(a) Any person, corporation, or other entity 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 Athens may also enforce this Ordinance through an action in equity. In such an action, the City of Athens shall be entitled to recover, without limitation, all costs of litigation, including, but not limited to, expert and attorney's fees.

(c) 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 all costs of litigation, including, without limitation, expert and attorney's fees.

(d) Any person who brings an action to secure or protect the rights of natural communities or ecosystems 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 Athens or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem. Any person or group of 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, 5th or 14th 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 Athens, or to challenge or overturn municipal ordinances adopted by the City of Athens, 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.

Section 6. 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 and safety. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Law, or parts of this Law, shall require the City

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 7. Call For Constitutional Change

With adoption of this Ordinance, the people of the City of Athens call for binding changes to the Constitution of the State of Ohio that recognize and enforce the right to local community self-government that shall not be preempted when the municipality enacts

laws that protect the health, safety and welfare of the community or when the municipality asserts and expands the rights of human and natural communities. Such changes shall also elevate the rights of the community above the legal privileges and protections afforded to corporations.

Section 8. Definitions

(a) “Chemical Trespass” shall mean the involuntary presence of toxic or potentially toxic chemicals and 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, sole proprietorship, 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 gas or oil extraction upon, into, or onto the land, waterways, air or any area within the City of Athens.

(d) “Ecosystem” shall include, but not be limited to, wetlands, watersheds, streams, rivers, aquifers, and other water systems, as well as naturally occurring airsheds and other habitats that sustain life.

(e) “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing, or producing shale gas or oil or other hydrocarbons.

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

(g) “Natural Communities” shall mean environments hosting humans and wildlife, flora, fauna, and soil-dwelling and aquatic organisms within a proliferating and diverse natural ecosystem.

(h) “Procurement of fresh water,” for purposes of this law, shall include the drawing of fresh water from anywhere within the City of Athens for the purpose of exploring for, or mining of, shale gas and oil.

(i) “Shale gas and oil” shall mean petroleum “natural” gas and oil currently deposited in a natural state within the Utica and Marcellus deposits below the aquifer supplying water to the city of Athens.

(j) “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 Athens City 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 process of deep shale horizontal fracturing for hydrocarbon extraction and from the haulage and disposal of wastewaters from such processes.

Section 9. 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 City Council of Athens 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 10. Repealer

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

Section 11. 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 the Law shall apply regardless of the date of any applicable State or Federal permits.

RECORD OF ORDINANCES

Ordinance No. 0-52-12

Passed May 7, 2012

Introduced by Chris Fahl, Chair
Planning & Development Committee

AN ORDINANCE AMENDING ATHENS CITY CODE, TITLE 39, WELLHEAD PROTECTION PLAN; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Code, Title 39, Wellhead Protection Plan, Chapter 39.01.02, Definitions, is hereby amended as follows:

"Facility" Any premises located in the wellhead protection area the use of which could impact the use of the underlying or adjacent aquifer for public drinking water supply. This definition includes, but is not limited to, buildings except private residential homes, storage area, industries, businesses, research facilities, institutions, recreational areas, mining, **DRILLING** or processing operations, farming operations, and planned unit developments with common maintenance areas.

"INJECTION WELL" AN INJECTION WELL IS A DEVICE THAT PLACES FLUID DEEP UNDERGROUND INTO POROUS ROCK FORMATIONS, SUCH AS SANDSTONE OR LIMESTONE, OR INTO OR BELOW THE SHALLOW SOIL LAYER. THESE FLUIDS MAY BE WATER, WASTEWATER, BRINE (SALT WATER), OR WATER MIXED WITH CHEMICALS.

SECTION II: Athens City Code, Title 39, Wellhead Protection Plan, Section (D) of Chapter 39.01.05, Prohibitions and Restrictions in the Wellhead Protection Area and Buffer Zone, is hereby amended to read as follows:

(D) Prohibited land uses/activities/facilities in the wellhead protection area and buffer zone. Unless explicitly permitted by other sections of this title, the following activities, businesses, operations and/or land uses are absolutely prohibited in the WHPA and WHPBZ:

- (1) Commercial junk and salvage yards, commercial sanitary/solid waste landfills, and construction and demolition debris landfills.
- (2) Disposal of shingles, asphalt, and/or lead-based or lead-containing materials.
- (3) Use of fly ash, fly ash containing materials, or other ash material for fill material.
- (4) Manufacturing, processing or recycling **OR DISPOSAL** of regulated substances as the principal activity.

Amended
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(5) Commercial establishments for motor vehicle repair/service shops and/or body repair.

(6) Trucking or bus terminals.

(7) Animal feed lots.

(8) Primary metal product industries, metal plating, polishing, etching, engraving, anodizing, or similar processes.

(9) Lawn, garden, pesticide, and agricultural services with onsite bulk mixing of fertilizers, pesticides, and other industry-related chemicals for commercial application.

(10) Use of oil, waste oil, or similar liquid petroleum-type products for dust, pest, or weed suppression.

(11) Dry cleaning facilities with onsite dry cleaning service.

~~(12) Land application of sewage sludge, pesticides, fertilizers (see subsection (F)(1) for provisions concerning pesticide, fertilizer applications).~~

(12) LAND APPLICATION OF SEWAGE SLUDGE, PESTICIDES AND FERTILIZERS NOT PERMITTED IN OTHER SECTIONS OF THIS TITLE. SEE SECTION 39.01.07(A) FOR PROVISIONS AND EXCEPTIONS REGARDING PESTICIDE AND FERTILIZER APPLICATIONS.

(13) Dry wells.

(14) Glass-V Injection wells.

(15) Underground storage tanks.

(16) DRILLING, MINING, EXPLORATION AND EXTRACTION OPERATIONS INCLUDING, BUT NOT LIMITED TO PETROLEUM, NATURAL GAS, AND MINERALS.

(17) THE STORAGE AND/OR DISPOSAL OF WASTEWATER AND OTHER BYPRODUCTS ASSOCIATED WITH DRILLING, MINING, EXPLORATION AND EXTRACTION OPERATIONS.

SECTION III: Athens City Code, Title 39, Wellhead Protection Plan, Sections (A) and (B) of Chapter 39.01.07, Management of Specific Potential Pollution Sources

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in the Wellhead Protection Area and Buffer Zone, are hereby amended to read as follows:

~~(A) Land application and storage of less than the BQT of pesticides and fertilizers is permitted on land that is part of individual private residences and on landscaped areas of businesses where the application of the pesticide or fertilizer is for maintenance of the landscaped area. Persons owning and/or occupying land where application of fertilizers and pesticides is permitted shall use ecological least-toxic biological materials and physical measures in place of regulated substances.~~

(A) PERMITTED USES OF PESTICIDES AND FERTILIZERS.

- 1. LAND APPLICATION AND STORAGE OF LESS THAN THE BQT OF PESTICIDES AND FERTILIZERS IS PERMITTED ON LAND THAT IS PART OF INDIVIDUAL PRIVATE RESIDENCES AND ON LANDSCAPED AREAS OF BUSINESSES WHERE THE APPLICATION OF THE PESTICIDE OR FERTILIZER IS FOR MAINTENANCE OF THE LANDSCAPED AREA. PERSONS OWNING OR OCCUPYING LAND WHERE THE APPLICATION OF FERTILIZERS AND PESTICIDES IS PERMITTED SHALL USE ECOLOGICAL, LEAST-TOXIC BIOLOGICAL (AND/OR MINERAL) MATERIALS AND PHYSICAL MEASURES IN PLACE OF REGULATED SUBSTANCES EXCEPT WHERE THE ADMINISTERING AUTHORITY OR HIS/HER DESIGNEE(S), AFTER REVIEWING THE REASONS, AMOUNT, AND METHOD OF APPLICATION, HAS PERMITTED A SINGLE EVENT APPLICATION OF REGULATED SUBSTANCES THAT ARE DETERMINED NOT TO POSE A RISK TO THE WATER SUPPLY.**

- 2. LAND APPLICATION OF PESTICIDES IS PERMITTED WHERE APPLICATION IS FOR PROTECTION OF A STRUCTURE (OR VEGETATION) FROM DAMAGE FROM AN EXISTING PEST INFESTATION. FOR LAND APPLICATION OF CHEMICAL OR OTHER PESTICIDES NOT RECOGNIZED TO BE ECOLOGICAL, LEAST-TOXIC BIOLOGICAL (AND/OR MINERAL) MATERIALS, APPLICATION MUST BE MADE TO THE ADMINISTERING AUTHORITY OR HIS/HER DESIGNEE(S) FOR APPROVAL TO USE THE PESTICIDE AND MUST SHOW THAT LEAST TOXICS ARE NOT ADEQUATE FOR THE PEST CONTROL PROBLEM AND THAT THE CHEMICAL WILL NOT POSE A RISK TO THE WATER SUPPLY. THE ADMINISTERING AUTHORITY MUST APPROVE THE APPLICATION OF THE PROPOSED PESTICIDE AND UNDER WHAT CONDITIONS IT MAY BE APPLIED**

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BY THE APPLICANT. THE PESTICIDE MUST BE LIMITED TO THE PLACE AND TIME OF THE INFESTATION.

(B) Recreational areas.

~~(1) Recreational areas located in the WHPA or WHPBZ that use grounds maintenance chemicals including, but not limited to, fertilizers (organic and inorganic), pesticides, and herbicides, must follow best management practices (BMPs) in order to minimize runoff and erosion and the leaching of fertilizers and pesticides. All recreational areas greater than one acre in size within the WHPA or WHPBZ that use grounds maintenance chemicals must submit on an annual basis for approval to the administering authority or his/her designee(s) a ground maintenance chemical application program. The program must provide a schedule of application and describe the types and quantities of chemicals used and the methods of application.~~

(1) RECREATIONAL AREAS LOCATED IN THE WHPA OR WHPBZ THAT MAY BE PERMITTED TO USE GROUNDS MAINTENANCE SUBSTANCES INCLUDING, BUT NOT LIMITED TO FERTILIZERS (ORGANIC OR INORGANIC), PESTICIDES AND HERBICIDES, MUST FOLLOW BEST MANAGEMENT PRACTICES (BMPs) IN ORDER TO MINIMIZE RUNOFF AND EROSION AND THE LEACHING OF FERTILIZERS AND PESTICIDES. TO BE PERMITTED, ALL RECREATIONAL AREAS WITHIN THE WHPA OR WHPBZ THAT USE GROUNDS MAINTENANCE SUBSTANCES MUST SUBMIT ON AN ANNUAL BASIS FOR APPROVAL TO THE ADMINISTERING AUTHORITY OR HIS/HER DESIGNEE(S) A GROUND MAINTENANCE SUBSTANCE APPLICATION PROGRAM. THE PROGRAM MUST PROVIDE A SCHEDULE OF APPLICATION AND DESCRIBE THE TYPES AND QUANTITIES OF SUBSTANCES USED AND THE METHOD OF APPLICATION. The administering authority or his/her designee(s) may conduct inspections of recreational areas to check for compliance with BMPs and to determine that fertilizers, herbicides, and pesticides are not being applied in amounts exceeding what has been determined to be the minimal amount necessary for grounds maintenance. The following BMPs must be employed where application of fertilizers and pesticides are used to manage plants for recreational areas:

- a. Grasses and other plantings must be selected that are culturally and climatically well adapted to the site to increase pest resistance and also to reduce irrigation and fertilization requirements.

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b. Fertilizers must be applied at the minimum levels required to obtain the desired plant quality.

c. Slow-release fertilizers with low leaching potential must be used to reduce potential effects to groundwater quality.

d. Onsite erosion must be controlled to prevent sediment and nutrients from contaminating lakes, ponds, streams, and wetlands.

e. Irrigation programs must be designed to decrease surface water runoff and to minimize potential nutrient leaching.

f. A buffer of 30 feet must be maintained around all surface water bodies in which no chemical application can take place.

g. An integrated pest management (IPM) program should be used to keep pests at acceptable levels while minimizing the potential for groundwater contamination.

h. If pesticides are used on recreational areas, only those with low leaching potential may be used to reduce the potential for groundwater contamination.

i. Storage of grounds maintenance chemicals in excess of the BQTs is prohibited within the WHPA and WHPBZ.

(2) Any spills of fertilizers, pesticides and/or regulated substances must be reported to the administering authority immediately upon detection of the spill.

(3) Plan review for recreational facilities:

~~a. Forty-five days before construction begins developers must submit to the administering authority or his/her designee(s), and the administering authority or his/her designee(s) shall approve or deny within 45 days, a plan of the proposed layout and subsurface design of the area. For golf courses this design plan will include tees, greens, fairways, practice range, buildings, roads, parking lots. Construction of such features when located in the WHPA will be by added fill material consisting of uncontaminated natural material.~~

a. BEFORE ANY CONSTRUCTION BEGINS, DEVELOPERS MUST SUBMIT TO THE ADMINISTERING AUTHORITY OR HIS/HER DESIGNEE(S), A PLAN OF THE PROPOSED LAYOUT AND

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SUBSURFACE DESIGN OF THE AREA. THE PLAN MUST BE APPROVED BEFORE ANY CONSTRUCTION MAY BEGIN. THIS DESIGN SHALL INCLUDE ALL FEATURES AND STRUCTURES OF THE FACILITY, FOR EXAMPLE: BUILDINGS, ROADS, PARKING LOTS, FENCES, PRACTICE RANGES, TEES, GREENS, FAIRWAYS, PLAYING FIELDS, BLEACHERS, DUG OUTS AND GOALS.

~~b. Developers must submit, 45 days before construction begins, a plan for the management of stormwater runoff, location of ponds (ponds must have impermeable liners) which must be approved by the administering authority.~~

b. BEFORE ANY CONSTRUCTION BEGINS DEVELOPERS MUST SUBMIT A PLAN FOR THE MANAGEMENT OF STORM WATER RUNOFF, INCLUDING THE LOCATION OF ANY PONDS (PONDS MAY BE REQUIRED TO HAVE IMPERMEABLE LINERS), WHICH MUST BE APPROVED BY THE ADMINISTERING AUTHORITY OR HIS/HER DESIGNEE(S).

c. Plans must include filtering runoff through vegetative means, and/or other filtering means, if hydrogeologic data deem necessary.

d. Any changes to approved plans must be submitted for approval.

SECTION IV: Athens City Code, Title 39, Wellhead Protection Plan, Section (B)(3) of Chapter 39.01.08, Enforcement of the Wellhead Protection Plan, is hereby amended to read as follows:

(B) Violations and penalties.

~~(3) Dumping of any prohibited material in the WHPA shall be remediated immediately and may be punishable by a fine of up to \$10,000.00. Each day of noncompliance shall be considered a separate offense.~~

(3) DUMPING OF ANY REGULATED SUBSTANCES AS REFERENCED IN SECTION 39.01.05(A) OR PROHIBITED MATERIALS ASSOCIATED WITH A PROHIBITED LAND USE, ACTIVITY, OR FACILITY AS REFERENCED IN SECTION 39.01.05(D) SHALL BE REMEDIATED IMMEDIATELY AND MAY BE PUNISHABLE BY A FINE OF UP TO \$10,000. EACH DAY OF NON-COMPLIANCE SHALL BE CONSIDERED A SEPARATE OFFENSE.

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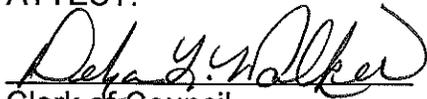
Passed _____, _____

SECTION V: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to ensure a safe water supply, and it shall be in full force and effect upon its passage and approval by the Mayor.



President of Council

ATTEST:



Clerk of Council

APPROVED:



Mayor

R-06-12

Introduced by All Council Members

A RESOLUTION REQUESTING WAYNE NATIONAL FOREST TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT PRIOR TO RELEASE OF ANY LANDS LOCATED WITHIN WAYNE NATIONAL FOREST TO THE BUREAU OF LAND MANAGEMENT FOR OIL/GAS LEASING.

WHEREAS, Ohio municipalities are required by law to protect the health and safety of their citizens from pollution of their water supply; and

WHEREAS, the City of Athens drinking water supply is a sole source aquifer adjacent to and recharged by the Hocking River, and significant water withdrawals from the aquifer and/or the Hocking River will have a deleterious effect on the City's water supply, which is our duty to maintain; and

WHEREAS, the water table in our well fields ranges from surface level to 20 feet below the surface throughout the year; and

WHEREAS, the aquifer that feeds Athens' water supply is shallow, averaging 60 feet below ground level, and is therefore especially susceptible to pollution from surface level and near-surface level contamination; and

WHEREAS, it is the constitutional duty of Athens elected officials to protect the health, safety and welfare of persons within its jurisdiction, and

WHEREAS, the 2006 Wayne National Forest Plan explicitly did not address impacts from Deep-Shale Horizontal Drilling and High-Volume Hydraulic Fracturing (HVHF), and

WHEREAS, HVHF has been documented extensively for highly significant impacts on water quality, air quality, human health, local economies, and social well-being, and

WHEREAS, the residents of Athens County have spoken via the Ohio University community survey in large majorities about their concerns with the potential impacts of HVHF on our community and especially on our drinking water supply, and

WHEREAS, the National Environmental Policy Act requires that an Environmental Impact Statement be completed to assess any action that may have significant impact on the human environment, and

WHEREAS, an EIS prior to release of lands to the BLM is the only way that our community's water, air, and economy can be assured of protection from damage by HVHF on Wayne lands, and

WHEREAS, sustainable economic development for Athens and surrounding areas require clean and safe drinking water, clean air, and a good quality of life, all of which will be threatened by damage from HVHF to essential and irreplaceable water and air resources;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATHENS, ATHENS COUNTY, OHIO THAT:

SECTION I: The City of Athens calls upon the Wayne National Forest to complete a National Environmental Impact (EIS) process prior to release of any surface or subsurface rights for oil/gas leasing under its jurisdiction.

SECTION II: The City recognizes that Wayne National Forest is legally obligated under the National Environmental Policy Act to consider regional impacts of significant activities on any and all Wayne National Forest lands. Furthermore, Wayne National Forest is under legal obligation to consider how leases on its land add cumulatively to the total impacts that will be experienced in our region. The Wayne is further obligated by NEPA to conduct an EIS with full public input and public assessment for sufficiency before engaging in an action with potentially significant impacts on the human environment in which the Forest is located.

SECTION III: In accordance with the National Environmental Policy Act, which authorizes the EIS process, that all significant impacts from potential HVHF activities be assessed and a full range of alternatives be considered with full public input and assessment for sufficiency before any lands or subsurface rights are released to the BLM for oil/gas leasing. These include potential economic, social and environmental impacts on the region.

SECTION IV: The City shall be kept informed of all aspects of the EIS process, including all public hearings and meetings, and shall be supplied with all draft reports.

SECTION V: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

RECORD OF RESOLUTIONS

Resolution No. **R-15-11**

Passed **December 19, 2011**

Introduced by All Members of Council

A RESOLUTION ASSERTING THE OBLIGATIONS OF THE CITY OF ATHENS AND THE INTERESTS OF ITS CITIZENS IN THE PROCESS OF DEEP SHALE DRILLING AND HORIZONTAL HYDRAULIC FRACTURING WITHIN ITS JURISDICTION.

WHEREAS, Athens City Council acknowledges the current provisions of ORC Section 1509.02 giving oil and gas well permitting authority to ODNR as stated by Law Director Lang; and

WHEREAS, Ohio municipalities are also required by law to protect the health and safety of their citizens from pollution of their water supply; and

WHEREAS, the City of Athens drinking water supply is a sole source aquifer adjacent to and recharged by the Hocking River, and significant water withdrawals from the aquifer and/or the Hocking River will have a deleterious effect on the City's water supply, which is our public duty to maintain; and

WHEREAS, the water table in our well fields ranges from surface level to 20 feet below the surface throughout the year; and

WHEREAS, the aquifer that feeds Athens' water supply is shallow, averaging 60 feet below ground level, and is therefore especially susceptible to pollution from surface level and near-surface level contamination; and

WHEREAS, recent scientific findings of the USEPA, called the Pavilion findings (released November 9, 2011), detected benzene at 50 times the established federal safe drinking water levels, phenols, methane, and drilling and fracturing materials known as (2-BE) 2-Butoxyethanol after two decades of ground injection by EnCana in the Pavilion Basin; and

WHEREAS, the USEPA is conducting a national study on the impacts of horizontal hydraulic fracturing on national and local water supplies based on extensive incidents of contamination and suspected contamination; and

WHEREAS, Ohio municipalities are required by law to maintain the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation; and

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WHEREAS, it is the constitutional duty of Athens elected officials to protect the health, safety and welfare of people within its jurisdiction, and air emissions of methane, volatile organic compounds, noxious fumes and particulate matter from industrial burning, industrial equipment operation, storage pond vaporization and excessive truck traffic will jeopardize public health and wellbeing.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATHENS, ATHENS COUNTY, OHIO, THAT:

SECTION I: The exercise of acquired drilling rights permitted pursuant to Ohio Revised Code Section 1509.02 remains subject to the City's local police power: including, but not limited to, the Athens Zoning Code, Title 23, Athens Subdivision Regulations, Title 21, EPA required Wellhead Protection Plan, Title 39, and Water Quality Management requirements.

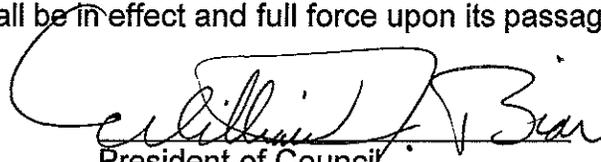
SECTION II: The City of Athens shall execute and enforce ordinances and regulations within its jurisdiction, as necessary, to protect its water supply and air quality.

SECTION III: The City of Athens shall execute and enforce ordinances and regulations within its jurisdiction, as necessary, to protect from pollution the City and its subdivisions, and into the wastewater treatment stream.

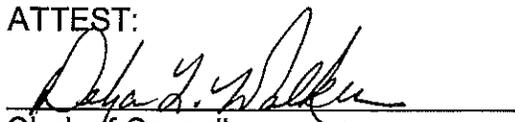
SECTION IV: The City of Athens shall execute and enforce its ordinances and regulations, as necessary, to maintain the thoroughfares under its care and funding.

SECTION V: Required curb cuts, road standards, construction and other bonds, and road construction will be subject to the conditions and current requirements as stated in the Athens City Code.

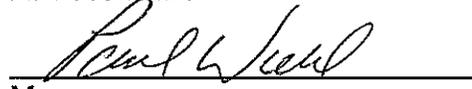
SECTION VI: This Resolution shall be in effect and full force upon its passage and approval by the Mayor.


President of Council

ATTEST:


Clerk of Council

APPROVED:


Mayor