

COUNCIL BILL NO. 1892, AS AMENDED

INTRODUCED BY: Diane Bernardo

ORDINANCE NO. 1795

AMENDING CHAPTER 27 OF THE CODE OF ORDINANCES OF THE CITY OF DUBOIS TO ADD PROVISION UNDER PART 20 OF CHAPTER 27 PROHIBITING THE CONSTRUCTION OF DISPOSAL INJECTION WELLS, SEISMOGRAPHIC SURVEYING OR SEISMIC TESTING AND THE COMMERCIAL EXTRACTION OF NATURAL GAS BY MEANS OF HORIZONTAL DRILLING IN ALL RESIDENTIAL, AND OFFICE ZONING DISTRICTS WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF DUBOIS.

WHEREAS, this Ordinance prohibits the depositing, storage, treatment, recycling, injection, distribution or depositing of brine, "produced water", "frack water", tailings or any other waste or bi-product of shale gas extraction upon, into or over the land, waterways, air or any area within the residential or office zoning districts of the City of DuBois because that disposal threatens the health, safety and welfare of residents and residential neighborhoods as well as the inhabitants of zoning districts of the City of DuBois; and

WHEREAS, this Ordinance also prohibits shale gas extraction and the commercial extraction of natural gas by means of horizontal drilling within any residential or office zoning district within the City because such activity could damage the storm sewers, water lines, sewer lines and water system of the City of DuBois and; accordingly, could threaten the health, safety, and welfare of residents and residential neighborhoods as well as the inhabitants of office districts located within the City of DuBois; and

WHEREAS, this Ordinance also prohibits seismographic, surveying or seismic testing within any residential district or office zoning district within the corporate boundaries of the City of DuBois because such activity could damage the storm sewers, water lines, sewer lines and water system of the City of DuBois and thus threaten the health, safety and welfare of residents, residential neighborhoods and the inhabitants of office zoning districts within the City of DuBois; and

WHEREAS, this Ordinance removes legal powers and authorities from gas extraction corporations to operate within residential zoning districts and office zoning districts within the City, and

WHEREAS, this Ordinance is enacted pursuant to the inherent right of the residents of the City of DuBois 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."; and

WHEREAS, this Ordinance is further enacted pursuant to the Section 27 rights of the residents of the City of DuBois "to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment"; and

WHEREAS, this Ordinance is further enacted pursuant to the authority granted to the City of DuBois under the Pennsylvania Municipalities Planning Code and the Third Class City Code to enact and amend zoning ordinances to promote the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Council of the City of DuBois, in Council assembled, and it is hereby enacted and ordained by authority of the same as follows:

SECTION 1 - FINDINGS AND INTENT

The Council of the City of DuBois finds that the commercial extraction of natural gas by means of horizontal drilling is an industrial use and any attempt to engage in such an industrial use within the residential or office zoning districts of the City of DuBois violates the rights of residents and residential neighborhoods and office neighborhoods, and poses a significant threat to their health, safety, and welfare. Moreover, widespread environmental and human health impacts have resulted from commercial gas extraction by means of horizontal drilling in areas other than those zoned industrial. Regulating the activity of commercial gas extraction by means of horizontal drilling that automatically means allowing commercial gas extraction by horizontal drilling to occur within every zoning district of the City of DuBois violates the rights of residents and inhabitants of residential and office neighborhoods and endangers their health, safety, and welfare by allowing the deposit of toxins into the air, soil, water, environment, and the bodies of residents and inhabitants within the residential and office zoning districts within the City of DuBois.

The City Council believes that the protection of residents, residential neighborhoods, and the occupants and inhabitants of office neighborhoods and the natural environment therein constitutes the highest and best use of the police powers and zoning powers that this municipality possesses. The City Council also believes that local legislation and, in particular, zoning regulations that embody the interests of the community is mandated by the doctrine of the consent of the governed, and the right to local, community self-government and the Pennsylvania Municipalities Planning Code. Thus, the City Council hereby adopts this Zoning Ordinance, which prohibits the commercial extraction of natural gas by means of horizontal drilling within residential zoning districts, office zoning districts because that extraction is an industrial use and cannot be performed within such residential zoned neighborhoods or office zoned neighborhoods without violating the rights of residents and communities within those zoning districts or endangering their health, safety and welfare and removes certain legal powers from gas extraction corporations operating within the City of DuBois and nullifies state laws, permits and other authorizations which interfere with the zoning ordinances of the City of DuBois and the rights secured by this Zoning Ordinance in accordance with the lawful police powers of the City of DuBois.

SECTION 2 - DEFINITIONS

(a) "Corporation" 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.

(b) "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 shale gas extraction upon, into, or over the land, waterways air or any area within the jurisdiction of the City of DuBois.

(c) "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons.

(d) "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.

(e) "Seismographic Surveying" or "Seismic Testing" shall mean the process by which geophones and drill/charge holes are pressed into the earth and into which dynamite is ignited to cause a vibration of the earth to determine the location of deposits of shall formations.

(f) "Sustainable energy" shall mean energy that is produced without violating the rights of the human and natural community, and which is specifically not derived from fossil fuels or nuclear fission. Energy derived from existing flows of energy generated by on-going natural processes, including, but not limited to, energy generated from the sun, flowing water, wind flows and geothermal heat flows. The term shall not include any source of energy generated from an increase in the use of fossil fuels, nuclear fission, or any derivative of those energy sources.

SECTION 3 - STATEMENTS OF LAW RIGHTS OF RESIDENTS OF THE CITY OF DUBOIS AND THE NATURAL ENVIRONMENT

(a) **Right to Water**. All residents, natural communities and ecosystems in the City of DuBois possess a fundamental and inalienable right to sustainable access, use, consume, and preserve water drawn from the natural water cycles that provide water necessary to sustain life within the City limits.

(b) **Right to Clean Air**. All residents, natural communities and ecosystems in the City of DuBois possess a fundamental and inalienable right to breathe air untainted by toxins, carcinogens, particulates and other substances known to cause harm to health.

(c) **Rights of Natural Communities and Ecosystems**. 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 DuBois. Residents of the City, along with the Municipality itself, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(d) **Right to a Sustainable Energy Future**. All residents, natural communities, and ecosystems within the City of DuBois 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.

(e) **Right to Self-Government**. All residents of the City of DuBois 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.

(f) **People as Sovereign**. The City of DuBois shall be the governing authority responsible to, and governed by, the residents of the City. Use of the "City of DuBois" 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.

(g) **Rights as Self-Executing**. All rights delineated and secured by this Ordinance shall be self-executing and these rights shall be enforceable against corporations and governmental entities.

**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 by means of horizontal drilling within any residential or office zoning district within the City of DuBois, with the exception of gas wells 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 and does not include horizontal drilling.

(b) It shall be unlawful for any individual or corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to deposit, store, "treat", inject or process wastewater, "produced" water, "frack" water, brine or other materials, chemicals or by-products that have been used in the extraction of shale gas onto or into the land, air, or waters of any residential district or office zoning district within the City of DuBois. This prohibition shall specifically apply to disposal injection wells.

(c) It shall be unlawful for any individual or corporation, or any director, officer, owner, or manager of a corporation to engage in or conduct seismographic surveying or seismic testing within any residential or office zoning district of the City of DuBois.

(d) Corporations in violation of the prohibition against conducting seismographic surveying or seismic testing, natural gas extraction by means of horizontal drilling, or seeking to engage in such natural gas extraction by means of horizontal drilling or the depositing, storing, "treating", injecting or processing of wastewater, "produced" water, "frack" water, brine or other materials, chemicals or by-products that have been used in the extraction of shale gas onto or into the land, air or waters within any residential or office zoning district of the City of DuBois, 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 conducting seismographic surveying or seismic testing or the extraction of natural gas by means of horizontal drilling or the depositing, storing, "treating" or injecting or processing of wastewater, "produced" water, "frack" water, brine or other materials, chemicals or by-products that have been used in the extraction of shale gas onto or into the land, air, or waters within any residential zoning district or office zoning district of the City of DuBois, shall not possess the authority or power to enforce State or Federal preemptive law against the people of the City of DuBois or to challenge or overturn municipal ordinances adopted by the City Council of the City of DuBois, when that enforcement or challenge interferes with the rights asserted by this Ordinance or interferes with the authority granted to this municipality under the Pennsylvania Municipalities Planning Code to enact zoning ordinances 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 Board of Supervisors 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 City resident(s),

natural community, or ecosystem located within any residential zoning district or office zoning district of the City of DuBois 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 the City of DuBois.

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 for a summary offense. 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 DuBois may also enforce this Ordinance through an action in Equity or any other action permitted by the Pennsylvania Municipalities Planning Code, 53 P.S. §10101, *et seq.*, to enforce the provisions of the City's Zoning Ordinances brought before the Court of Common Pleas of Clearfield County. In such an action, the City of DuBois shall be entitled to recover all costs of litigation, including, without limitation, the costs of experts and attorney's fees.

(c) Any resident of the City of DuBois shall have the authority to enforce this Ordinance through an action in Equity brought in the Court of Common Pleas of Clearfield County. In such an action, the resident shall be entitled to recover all cost of litigation, including, without limitation, the cost of experts and attorney's fees.

SECTION 6 - EFFECTIVE DATE AND EXISTING 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 by means of horizontal drilling and all depositing of waste from shale gas extraction in any residential or office zoning district in the City of DuBois, whether originating in the City of DuBois or elsewhere, regardless of the date of any applicable DEP or other 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 the pursuit of happiness as well as the City's rights to enact zoning ordinances under the provisions of the Pennsylvania Municipal Planning Code. 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 of DuBois 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 and the City's right to enact zoning ordinances to promote the public health, safety and general welfare.

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 City Council of the City of DuBois 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 or unconstitutional.

SECTION 9 - REPEALER

All other parts of Chapter 27 and the Code of Ordinances of the City of DuBois not in conflict herewith are re-affirmed and re-ratified as if set forth at length herein.

All parts of Chapter 27 and the Code of Ordinances of the City of DuBois in conflict herewith are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ORDAINED AND ENACTED into law this 5th day of June, 2014.

ATTEST:

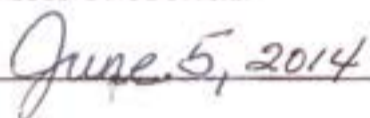


City Manager

By: 

Gary D. Gilbert
Mayor & President of Council

PASSED BY COUNCIL:



APPROVED: 

City Solicitor