

VILLAGE OF ALTO PASS, ILLINOIS

ORDINANCE NO. 2012 - 1211

AN ORDINANCE TO PROTECT THE PUBLIC HEALTH, SAFETY AND RIGHTS OF THE COMMUNITY, ITS AIR, WATER AND LAND, AND THE NATURAL ENVIRONMENT, FROM UNCONVENTIONAL EXTRACTION OF SHALE GAS AND OIL AND ASSOCIATED ACTIVITIES.

WHEREAS, the Village finds that new technologies and processes are now being employed in the commercial extraction of natural gas and oil, known as hydraulic fracturing and horizontal drilling; and that these technologies pose a significant threat to the health, safety, and welfare of residents of the Village; and

WHEREAS, the Village finds that hydraulic fracturing and horizontal drilling in the United States has resulted in widespread environmental degradation and adverse effects to human health, despite assurances from proponents that these processes are safe; and

WHEREAS, the Village finds that a recent study published by the National Academy of Sciences has documented a dangerous and explosive buildup of methane gas in the water supply of homes in the vicinity of hydraulic fracturing wells; and

WHEREAS, the Village finds that hydraulic fracturing and horizontal drilling, as currently practiced, will allow the deposit of toxic chemicals into the air, soil, and water within our Village, thereby posing unacceptable levels of risk to human health, safety, and welfare, and threatening the integrity of the farmland on which we depend for food, the water which we require to drink, and the natural eco-system in which we live; and

WHEREAS, the Village finds that the risks posed by hydraulic fracturing and horizontal drilling, including contamination of air, water and soil; the unsustainable use of limited water supplies; the migration of gases and hydraulic fracturing chemicals to the surface; and the inability to recover injected fluids and chemicals, are serious and potentially catastrophic; and

WHEREAS, the Village finds that industry sources acknowledge that each hydraulic fracturing and horizontal drilling well may require the use of up to 90 million gallons of fresh water, which will become contaminated with toxic chemicals from the drilling itself and from salts taken up through the shale, forming a dangerous “brine” which will have to be stored indefinitely in holding wells; and

WHEREAS, the Village finds that fracturing fluid used far below the earth's surface can impact the rock shelf, causing seismic events and surface subsidence; and

WHEREAS, the Village finds that the constant transport, handling, storage and use of

toxic chemicals on a mass scale, wherever hydraulic fracturing drilling operations are sited, presents a major and unacceptable risk of accidental release of such toxic chemicals into the environment; and

WHEREAS, the Village finds that the potential economic costs to this community posed by hydraulic fracturing and horizontal drilling for environmental clean-up, loss of land areas that cannot be cleaned up, loss of property values, loss of clean water supplies, and adverse impacts on human and animal health, cannot be determined with any degree of certainty and pose an unacceptable risk that far outweighs any short-term economic benefits; and

WHEREAS the Village finds that Section 11-56-1 of the Municipal Code (65 ILCS 5) authorizes the corporate authorities of each municipality to decide whether or not to grant permits to mine oil or gas within the Village limits, or to impose such restrictions on the granting of permits as will protect public and private property and insure proper remuneration for such grants.

WHEREAS the Village finds that the Illinois Oil and Gas Act, 225 ILCS 725/13, requires the Department of Natural Resources to obtain official permission from the Village before granting any permits to drill within the Village limits, and the Village need not grant any such permission; and

WHEREAS the Village finds that its new public well will be endangered by any hydraulic fracturing activity which takes place within the Village; and

WHEREAS, the Village finds that when an activity threatens serious harm to the environment or human health, precautionary measures should be taken unless and until it can be proven to a reasonable degree of certainty that the activity no longer presents a threat of serious harm to the environment or human health; and

WHEREAS, the Village finds that existing State and Federal regulations governing natural gas extraction have failed to adequately protect human and environmental health where hydraulic fracturing and horizontal drilling methods are being used; and

WHEREAS, the Village believes that the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police powers that it possesses; and

WHEREAS, the Village believes that local ordinances should reflect the interests of the community and be guided by the doctrine of consent of the governed, and the right of community self-government;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ALTO PASS AS FOLLOWS:

SECTION 1. PURPOSE

The purpose of this Ordinance is to protect the public health, protect air quality, protect water quality, protect land quality, protect property values, prevent land subsidence and/or earthquakes, protect the economic interests of the community, safeguard the peace and tranquility of the community, protect the natural eco-systems that sustain all life, and safeguard the interests of future generations in this Village.

To serve these purposes, the Village of Alto Pass hereby adopts this Ordinance, which BANS commercial extraction of natural gas and oil utilizing hydraulic fracturing and horizontal well drilling within the Village.

SECTION 2. DEFINITIONS

A. "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing, recovering, extracting or producing natural gas or oil or other hydrocarbons using a process commonly known as hydraulic fracturing and/or horizontal drilling.

B. "Extraction, Production and Delivery Infrastructures" shall mean, but shall not be limited to; pipelines, processing facilities, compressors, and anything else used for storage or transportation of natural gas or oil.

C. "Hydraulic fracturing" shall mean an operation in which water, chemicals and/or a solid proppant (granular substances such as sand grains, aluminum pellets, or other material that is carried in suspension) are pumped into a well bore with the intention of causing cracks in the formation rock, thus allowing the fracturing fluid to enter and extend the crack, forming passages through which natural gas or oil can flow.

D. "Horizontal drilling" shall mean the practice of intentionally turning a well bore from the vertical to the horizontal for the purpose of reaching subsurface areas laterally remote from the point where a well initially enters the earth at the surface.

E. "Production Activities" shall include, but not be limited to, the siting of compressors, drill rigs, pipelines, waste water storage, treatment or processing facilities, and any extraction, production or delivery infrastructures related to unconventional natural gas or petroleum extraction.

F. "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 state at standard temperature and pressure, and/or gaseous components occurring in or derived from petroleum, or so-called "natural" gas.

G. "Unconventional Extraction" shall mean either horizontal well drilling, or hydraulic fracturing, or both used in combination.

SECTION 3. LEGAL AUTHORITY

This Ordinance is enacted pursuant to the police powers granted to the Village as follows:

- A. The Illinois Oil and Gas Act, 225 ILCS 725/13 requires the official consent of municipal authorities whenever “an application is made to drill or deepen an oil or gas well within the limits of any Village, village or incorporated town.” It further mandates that the Department of Natural Sciences deny any such request for a permit “unless consent [from the municipality] is secured and filed with the application;”
- B. The Municipal Code, 65 ILCS 5/11-56-1 provides that: “The corporate authorities of each municipality *may* grant permits to mine oil or gas, under such restrictions as will protect public and private property and insure proper remuneration for such grants.” The granting of permits by the corporate authorities is purely discretionary.
- C. The Illinois Fifth District Appellate Court has held in *Tri-Power Resources, Inc. v. Village of Carlyle*, 2012 IL App (5th) 110075 “that a non-home rule unit of government may prohibit the drilling or operation of an oil or gas well within its municipal limits.”
- D. Section 11-19.1-11 of the Municipal Code, 65 ILCS 5/11-19.1-11 authorizes “the corporate authorities of a Village, village or incorporated town” to prescribe by ordinance”... “uses of land connected with the emission of air contaminants, (2) the operation or use of equipment and appliances emitting air contaminants, (3) the conduct or carrying on of uses of land which causes the emission into the atmosphere of air contaminants, and (4) the abatement of an operation, activity or use causing air contamination...”
- E. Section 11-20-4 of the Municipal Code, ILCS 5/11-20-4 states that the corporate authorities of each municipality “may provide for the cleansing and purification of waters, watercourses, and canals...”
- F. Section 11-20-5 of the Municipal Code, ILCS 5/11-20-5 states that the corporate authorities of each municipality “may do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases...”
- G. Section 11-42-9 of the Municipal Code, ILCS 5/11-42-9 states that the corporate authorities of each municipality “may prohibit any offensive or unwholesome business...within the municipality and within the distance of one mile beyond the municipal limits.”
- H. Article 11 § 1 of the Constitution of the State of Illinois states: “The public policy of the State and the duty of each person is to provide and maintain a healthful

environment for the benefit of this and future generations.”

- I. Article 11 § 2 of the Constitution of the State of Illinois states: “Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.”

SECTION 4. HYDRAULIC FRACTURING AND HORIZONTAL DRILLING PROHIBITED

A. It shall be unlawful for any person, corporation, or other business entity to engage in the extraction of natural gas or oil utilizing in whole or in part the process commonly known as and herein defined as hydraulic fracturing within the Village of Alto Pass.

B. It shall be unlawful for any person, corporation, or other business entity to engage in the extraction of natural gas or oil, utilizing in whole or in part the process commonly known as and herein defined as horizontal drilling, within the Village of Alto Pass.

C. It shall be unlawful for any person, corporation, or other business entity, or any director, officer, owner, or manager of a corporation or other business entity, to use a corporation or business entity to store, transport or process waste water, “produced” water, “frack” water, brine or other materials, chemicals or by-products used in the unconventional extraction of natural gas, as defined herein, or to deposit those materials into the land, air or waters within the Village of Alto Pass.

SECTION 5. ENFORCEMENT AND PENALTIES

A. Any person, corporation, or other business entity that violates any prohibition of this Ordinance may be charged with a misdemeanor punishable upon conviction by incarceration not to exceed 6 months, and/or a fine of \$750 for each such offense. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance violated.

B. The Village of Alto Pass may also enforce this Ordinance by bringing a civil action in the Circuit Court of Union County. In such an action, the Village shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney’s fees. Damages shall include the cost of restoring the natural ecosystem to its prior condition, and shall be paid to the Village, to be used exclusively for the restoration.

C. Any resident of the Village of Alto Pass shall have the authority to enforce this Ordinance by a civil action in the Circuit Court of Union County. In such an action, the resident shall be entitled to recover damages and costs of litigation, including, without limitation, expert and attorney’s fees. Damages shall include the cost of restoring the natural ecosystem to its prior condition, and shall be paid to the Village, to be used exclusively for the restoration.

SECTION 6. 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 remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Village Council hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

SECTION 7. REPEALER

All inconsistent provisions of prior laws adopted by the Village of Alto Pass are hereby repealed, but only to the extent necessary to remedy the inconsistency.

SECTION 8. EFFECTIVE DATE

This Ordinance shall take effect immediately upon the date of its adoption.

APPROVED at the regular meeting of the Village Council of Alto Pass , Illinois, on December 11th, 2012.

Don Rehmer- Village President

ATTEST:

Kelli Ellis- Village Clerk