

# Ordinance # 1834

Enacted 3/19/2018

26 AYES 0 NOES

..title

ORDINANCE AMENDING THE NEW HAVEN MUNICIPAL CODE OF ORDINANCES TO INCLUDE LANGUAGE PROHIBITING WASTE ASSOCIATED WITH NATURAL GAS AND OIL EXTRACTION.

..body

WHEREAS: The extraction of natural gas and oil from shale formations through a method called fracking is poorly regulated and causing severe environmental problems; and,

WHEREAS: These problems include the pollution of rivers and the poisoning of people and animals; and,

WHEREAS: The process used to extract natural gas and oil from shale formations requires massive amounts of water, sand, and toxic chemicals which then require enormous holding ponds and/or tanks to store the chemically contaminated waste; and,

WHEREAS: The national government does not protect the health of either the environment or people from the dangers of this waste; and,

WHEREAS: The state does not protect the health of either the environment or people from the dangers of this waste; and,

WHEREAS: It is thus incumbent on the City of New Haven to protect itself from the importation of toxic fracking wastes; and,

WHEREAS: The City Services and Environmental Policy Committee heard from the Environmental Advisory Council and numerous citizens on November 14, 2018 and March 1, 2018; and,

WHEREAS: That testimony powerfully urged New Haven to join with over twenty other Connecticut cities who have passed ordinances prohibiting waste associated with natural gas and oil extraction to protect the future of the City.

NOW, THEREFORE, BE IT ORDAINED THAT:

The City of New Haven hereby enacts a prohibition on waste associated with natural gas and oil extraction and amends the New Haven Code of Ordinances to include the following prohibition in the Chapter 30 <sup>3</sup>/<sub>4</sub> .

Chapter 30 <sup>3</sup>/<sub>4</sub> Sec. xx. Ordinance Prohibiting Waste Associated with Natural Gas and Oil Extraction

Purpose. The prohibition of waste associated with the drilling and extraction of natural gas and oil is hereby declared necessary for the protection of the health, safety, welfare and property of the residents of the City of New Haven pursuant to the provisions of Section 7-148 of the Connecticut General Statutes that pertain in any way to the protection of health, safety, welfare and property, as the same may be amended from time to time.

Definitions for the Purposes of this Ordinance:

For the purposes of this Ordinance, the following terms, phrases, and words shall have the meanings given here, unless otherwise clearly indicated by the context:

“Hydraulic fracturing” shall mean the fracturing of underground rock formations, including shale and non-shale formations, by manmade fluid-driven techniques for the purpose of stimulating oil, natural gas, or other subsurface hydrocarbon production.

“Natural gas extraction activities” shall mean all geologic or geophysical activities related to the exploration for or extraction of natural gas, including, but not limited to, core and rotary drilling and hydraulic fracturing.

“Oil extraction activities” shall mean all geologic or geophysical activities related to the exploration for or extraction of oil, including, but not limited, to core and rotary drilling and hydraulic fracturing.

“Natural gas waste” shall mean: a) any liquid or solid waste or its constituents that is generated as a result of natural gas extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or

other contaminants; b) leachate from solid wastes associated with natural gas extraction activities; c) any waste that is generated as a result of or in association with the underground storage of natural gas; d) any waste that is generated as a result of or in association with liquefied petroleum gas well storage operations; and e) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

“Oil waste” shall mean: a) any liquid or solid waste or its constituents that is generated as a result of oil extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; b) leachate from solid wastes associated with oil extraction activities; and c) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

“Application” shall mean the physical act of placing or spreading natural gas waste or oil waste on any road or real property located within the City of New Haven.

### (c) Prohibitions

The application of natural gas waste or oil waste, whether or not such waste has received Beneficial Use Determination or other approval for use by the Department of Energy & Environmental Protection (“DEEP”) or any other regulatory body, on any road or real property located within the City of New Haven for any purpose is prohibited.

The introduction of natural gas waste or oil waste into any wastewater treatment facility within or operated by the City of New Haven is prohibited.

The introduction of natural gas waste or oil waste into any solid waste management facility within or operated by the City of New Haven is prohibited.

The storage, disposal, sale, acquisition, transfer, handling, treatment and/or processing of natural gas waste or oil waste is prohibited within the City of New Haven.

Provision to be included in bids and contracts related to the construction or maintenance of publicly owned and/or maintained roads or real property within the City of New Haven:

All bids and contracts related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the City of New Haven shall include a provision stating that no materials containing natural gas or oil waste shall be utilized in providing such a service.

All bids and contracts related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and/or maintained road or real property within the City of New Haven shall include a provision stating that no materials containing natural gas or oil waste shall be provided to the City of New Haven.

The following statement, which shall be a sworn statement under penalty of perjury, shall be included in all bids related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and/or maintained road or real property within the City of New Haven and all bids related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the City of New Haven: “We \_\_\_\_\_ hereby submit a bid for materials, equipment and/or labor for the City of New Haven.. The bid is for bid documents titled \_\_\_\_\_. We hereby certify under penalty of perjury that no natural gas waste or oil waste will be used by the undersigned bidder or any contractor, sub-contractor, agent or vendor agent in connection with the bid; nor will the undersigned bidder or any sub-contractor, agent or vendor agent thereof apply any natural gas waste or oil waste to any road or real property within the City of New Haven as a result of the submittal of this bid if selected.”

### Penalties

This ordinance shall apply to any and all actions occurring on or after the effective date of this ordinance. In response to a violation of this ordinance, the City of New Haven is empowered to a) issue “Cease and Desist” orders demanding abatement of the violation, b) seek any appropriate legal relief, including immediate injunctive relief, as a result of any violation of this ordinance; c) file a complaint with any other proper authority; and d) require remediation of any damage done to any land, road, building, aquifer, well, watercourse, air quality or other asset, be it public or private, within the City of New Haven. The City of New Haven may recoup from the offending person(s), jointly and severally, all costs, including experts, consultants and reasonable attorney’s fees, that it incurs as a result of having to prosecute or remediate any infraction of this ordinance. For any violation of this Ordinance, the City of New Haven may also impose fines in the amount of \$250 per violation per day, or such other amount as is allowed by law, and seek any other remedies allowable under the law.

#### Enforcement:

The City of New Haven's Department of Public Works is hereby empowered and authorized to, if appropriate, issue orders and other directives under this Ordinance and refer matters in connection therewith to the City of New Haven's Office of the Corporation Counsel. City of New Haven employees, officers and officials are not required to personally carry out testing of waste products to determine chemical contents, as this work may be done via contacting the State of Connecticut Department of Energy and Environmental Protection or the appropriate analytical laboratory or laboratories. If appropriate, the City of New Haven's Department of Public Works may request that the State of Connecticut Department of Energy and Environmental Protection pursue civil penalties allowable under the law.

#### Severability

If any clause, sentence, paragraph, subdivision, section or part of this Ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Ordinance or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered. To further this end, the provisions of this Ordinance are hereby declared to be severable.

#### Conflicts with other Ordinances or Codes

In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the City of New Haven, the provision that establishes the higher standard for the protection of the health, safety, welfare and property of the residents of the City of New Haven shall prevail. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the City of New Haven, which other ordinance or code establishes a lower standard for the protection of the health, safety, welfare and property of the residents of the City of New Haven, the provisions of this Ordinance shall be deemed to prevail, and such other ordinances or codes are hereby declared to be repealed to the extent that they may be found in conflict with this Ordinance.

#### Transportation

Nothing in this ordinance shall be interpreted to ban the transportation of any product or by-product described herein on any roadway or real property within the City of New Haven.

This Ordinance shall take effect upon adoption.