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Montgomery County Anti-Corporate Takings and Securing Local Self-Governance Ordinance

Montgomery County, Virginia (November 7, 2006)
Ordinance No. _____ of 2006

AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND NATURAL ENVIRONMENT OF MONTGOMERY COUNTY, VIRGINIA BY BANNING CORPORATIONS FROM TAKING PRIVATE PROPERTY WITHIN THE COUNTY; BY BANNING THE EXERCISE OF CERTAIN POWERS BY CORPORATIONS; BY RECOGNIZING THE RIGHTS OF PEOPLE, ECOSYSTEMS AND NATURAL COMMUNITIES, AND BY PROVIDING FOR ENFORCEMENT OF THOSE RIGHTS.

Section 1—Name

This Ordinance shall be known and may be cited as the “Montgomery County Anti-Corporate Takings and Securing Local Self-Governance Ordinance.”

Section 2—Authority

This Ordinance is enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the County of Montgomery to democratic self-governance and their right to be free from anti-democratic private governments, and by authority granted to the municipal government of Montgomery County by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

The Declaration of Independence, which declares that the people of Montgomery County are born with “certain unalienable rights” and that governments are instituted among people to secure those rights;

The Ninth Amendment to the United States Constitution, which declares, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”;

The Fourteenth Amendment to the United States Constitution, which declares in part, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”;

The Virginia Constitution, Article 1, Section 1, which declares that all people “are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety”;

The Virginia Constitution, Article 1, Section 2, which does not declare that corporations have any rights, but does declare that “all power is vested in, and consequently derived from, the people”;

The Virginia Constitution, Article 1, Section 3, which declares that “government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. . . and whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and infeasible right to reform, alter, or abolish it”;

The Virginia Constitution, Article 1, Section 4, which declares that “no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community,” and thus, corporations, as sets of men, shall not enjoy special legal privileges;

The Virginia Constitution, Article XI, Section 1, which declares that “it shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth”;

The Virginia Code, §15.2-1200, which declares that “any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants.”

Section 3—Findings and Purpose

In support of the enactment of this Ordinance, the Board of Supervisors of Montgomery County finds and declares that:

The Virginia Constitution recognizes that residents of Montgomery County are born “equally free and independent and have certain inherent rights,” which include the rights of life and liberty, and the right to acquire and possess property. Despite the plain meaning of these words, it required centuries of struggle by people in communities to drive meaning into them.

The Virginia Constitution recognizes that all power is vested in, and consequently derived from, the people, and that governments are established to protect the rights of people, and are established for the common benefit, protection, and security of the people. The Board of Supervisors finds that it would be illogical for people to establish governments that then act to deny the people’s own fundamental and inalienable rights.

The General Assembly of the Commonwealth of Virginia has granted certain corporations the authority to take private property, and authorized the Boards of Directors of those corporations to determine when that taking of private property is appropriate. The Board finds that, in so doing, the legislature has illegitimately conferred special legal powers and privileges upon a corporate minority – what American Revolutionaries regarded as dreaded private governments – enabling that minority to nullify democratic self-governance.

The Board declares that the conferral of those special legal powers and privileges onto a corporate few violates the framework of government established by the Virginia Constitution, because under that framework of law, government is denying rights indirectly when it is prohibited under that structure of law from denying people’s rights directly.

The Board of Supervisors of Montgomery County finds that the power of eminent domain can only rightfully be asserted by democratically elected governments, and then only for a “public use,” as determined by democratic decisionmaking. The Board of Supervisors finds that the legislature’s conferral of the power of eminent domain upon corporations is an illegal, illegitimate, and improper delegation. The Board finds that conferral of the power of rights-denying eminent domain upon corporations violates the rights secured to the people of Montgomery County by the Virginia Constitution.

The Board of Supervisors of Montgomery County finds that the conferral of the power of eminent domain is similar to the federal and state governments’ conferral of constitutional rights and protections upon corporations in the United States over the past century, and that the conferral of those rights endangers the ability and authority of the Board of Supervisors to fairly and adequately represent the majority of the residents of Montgomery County.

In order to vindicate republican self-governance, protect the health, safety, and welfare of the residents of Montgomery County, the soil, groundwater and surface water, cultural heritage, the environment and its flora and fauna, and preserve the rural quality of life within the County, the County finds it necessary to ban corporations from taking private property within this County. The Board also finds it necessary to assert its inherent power and fundamental right of self-governance by eliminating competing claims to “rights” asserted by corporations against the residents of Montgomery County.

Section 4—Interpretation

Anyone interpreting, implementing, or applying this Ordinance shall give priority to the findings and purposes stated in Sections 2 and 3 over such accounting and business terms characterized as “economy,” “efficiency,” and “scheduling factors.”

Section 5—Definitions

The following terms shall have the meanings defined in this section wherever they are used in this Ordinance.

Corporation: Any corporation organized under the laws of any state of the United States or under the laws of any country. The term shall also include any 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. The term shall also include any business entity in which one or more owners or partners is a corporation or other entity in which owners, directors, officers and/or managers possess limited liability attributes.

County: Montgomery County, Virginia, its Board of Supervisors, or the Board's representatives or agents.

Ordinance: The Montgomery County Anti-Corporate Takings and Securing Local Self-Governance Ordinance.

Person: A natural person, or an association of natural persons that does not qualify as a corporation under this Ordinance.

Resident: A natural person residing in Montgomery County, Virginia.

Substantially Owned or Controlled: A person, corporation, or other entity substantially owns or controls another person, corporation, or other entity if it has the ability to evade the intent of this Ordinance by using that person, corporation, or other entity to violate this Ordinance.

Section 6—Statements of Law – Rights of Montgomery County Residents and Communities

Section 6.1: All residents of Montgomery County possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna. All residents of Montgomery County possess fundamental and inalienable rights to their livelihood, homes and land, and enjoyment of those homes and land. The exercise by residents of their rights within this section shall not interfere with those same rights possessed by other residents, nor with natural communities or ecosystems.

Section 6.2. All residents of Montgomery County possess a fundamental and inalienable right to their communities' cultural heritage within the County. Residents' right to their own histories shall include a right to the preservation of historic buildings, unaltered rural historic districts and landscapes, and other structures, relationships, and lands that residents of Montgomery County deem important to the preservation of their cultural heritage.

Section 6.3. All residents of Montgomery County possess a fundamental and inalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the County.

Section 6.4. All residents of Montgomery County possess the fundamental and inalienable right to a republican form of governance – a form of governance which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority, that preemptions of the people's authority to make governing decisions for their communities are illegitimate, and that corporate entities and their directors and managers must not enjoy special privileges or powers under the law.

Section 6.5. Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the County of Montgomery. Ecosystems shall include, but not be limited to, forests, meadows, caverns, wetlands, streams, rivers, aquifers, and other water systems.

Section 7—Statements of Law

Section 7.1: It shall be unlawful for any corporation to initiate eminent domain proceedings to take private property within the County of Montgomery. It shall be unlawful for any person to assist a corporation to take private property within Montgomery County.

Section 7.2: It shall be unlawful for any director, officer, owner, agent, or manager of a corporation to use a corporation to initiate eminent domain proceedings to take private property within the County of Montgomery.

Section 7.3: It shall be unlawful for any corporation or its directors, officers, owners, agents, or managers to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems. The County of Montgomery, along with any resident of the County, shall have standing to seek declaratory, injunctive, compensatory, and punitive relief for damages caused to natural communities and ecosystems within the County, regardless of the relation of those natural communities and ecosystems to County residents or the County itself. County residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of enforcing the federal civil rights of those residents, natural communities, and ecosystems.

Section 7.4. It shall be unlawful for any corporation - or the corporation's agents, directors, officers, owners, or managers operating in their corporate capacities - to transfer any monies, services, products, or any other thing of value, to persons serving as candidates for elected or appointed offices within the County. It shall be unlawful for any corporation - or the corporation's agents, directors, officers, owners, or managers operating in their corporate capacities - to contact, or to communicate with, any resident of Montgomery County concerning any issue related to the substance or enforcement of this Ordinance.

Section 7.5. Within Montgomery County, corporations shall not be "persons" under the United States or Virginia Constitutions, or under the laws of the United States, Virginia, or Montgomery County, and so shall not have the rights of persons under those constitutions and laws. In addition, within the County of Montgomery, no corporation shall be afforded the privileges, powers, and protections of the Contracts Clause or Commerce Clause of the United States Constitution, or of similar provisions from the Virginia Constitution.

Section 7.6. Within Montgomery County, it shall be unlawful for any corporation or its directors, officers, owners, agents, lawyers, or managers to claim ownership of, or compensation for, "future profits." Denial of claimed "future profits" by exercises of self-governance by the Montgomery County Board of Supervisors shall not constitute a "taking" under local, state, or federal law.

Section 8—Administration

This Ordinance shall be administered by the Montgomery County Board of Supervisors.

Section 9—Enforcement

Section 9.1: Montgomery County shall enforce this Ordinance by an action brought in the same manner as provided in the Code of Virginia, §18.2-11 for the punishment of a class 3 Misdemeanor.

Section 9.2: Any person, corporation, or other entity that violates any provision of this Ordinance shall, upon conviction be imprisoned to the extent allowed by law for the punishment of a class 3 Misdemeanor.

Section 9.3: A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance that is found to be violated.

Section 9.4: Montgomery County may also enforce this Ordinance through an action in equity brought in the appropriate Circuit Court. In such an action, Montgomery County shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees. Such an action to enforce this Ordinance may also be brought by any resident of Montgomery County, and that resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 9.5: All monies collected for violation of this Ordinance shall be paid to the Treasurer of Montgomery County.

Section 9.6: Any person, corporation, or other entity that violates, or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from doing business within the County of Montgomery. This prohibition applies to that person's, corporation's, or other entity's owner (either partial or complete), successor companies, subsidiaries, and alter egos; and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

Section 10—Civil Rights Enforcement

Section 10.1: Any corporation operating under a State charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a State charter or certificate of authority to do business, who deprives any County resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Virginia Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation to satisfy that liability, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to Montgomery County for restoration of those natural communities and ecosystems.

Section 10.2: Any County resident shall have standing and authority to bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and County residents, as recognized by sections 6 and 11 of this Ordinance.

Section 11—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, property, and pursuit of happiness. Any attempts to use county, state, or federal levels of government – judicial, legislative, or executive - to preempt, amend, alter, or overturn this Ordinance or parts of this Ordinance, or to intimidate the people of Montgomery County or their elected officials by threatening to sue or by suing, shall require the Board of Supervisors of Montgomery County to hold countywide 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-governance. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Ordinance or other levels of government used to intimidate the people of Montgomery County or their elected officials.

Section 12—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 Board of Supervisors of Montgomery County 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 13—Repealer

All inconsistent provisions of prior Ordinances adopted by the Montgomery County Board of Supervisors are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ___ day of _____, 2006, by the Board of Supervisors of Montgomery County of the Commonwealth of Virginia.

By: _____

Attest: _____