

Borough of Wilkinsburg, Pennsylvania
Ordinance No. _____ of 2011

Whereas, this ordinance establishes a Bill of Rights which recognizes and secures the civil and political rights of Wilkinsburg residents; and

Whereas, this ordinance then bans the commercial extraction of natural gas within the Borough because that extraction violates the civil rights of Wilkinsburg residents, and because it threatens the health, safety, and welfare of residents and neighborhoods of Wilkinsburg; and

Whereas, this ordinance removes legal powers and authority from gas extraction corporations within the Borough, in recognition that those legal powers are illegitimate and unjust, in that they place the rights of those corporations over the rights and political authority of Wilkinsburg residents; and

Whereas, this Ordinance shall be known and may be cited as “Wilkinsburg’s Community Protection from Natural Gas Extraction Ordinance;” and

Whereas, this Ordinance is enacted pursuant to the inherent right of the residents of the Borough of Wilkinsburg 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.”

Section 1—Findings and Intent

The Borough Council of Wilkinsburg finds that the commercial extraction of natural gas in the urban environment of Wilkinsburg violates the rights of residents and 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 in other areas. Regulating the activity of commercial gas extraction automatically means allowing commercial gas extraction to occur within the Borough, 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 within our Borough.

Meaningful regulatory limitations and prohibitions concerning Marcellus Shale natural gas extraction, along with zoning and land use provisions, are barred because they conflict with certain legal powers claimed by resource extraction corporations. The Borough Council recognizes 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 Borough Council also recognizes 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 Borough Council believes 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 Borough Council also believes 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 Borough Council hereby adopts this ordinance, which establishes a Bill of Rights for the residents and communities of the Borough, bans commercial extraction of Marcellus Shale natural gas within the Borough of Wilkinsburg because that extraction cannot be achieved without violating the rights of residents and communities or endangering their health, safety, and welfare, , removes certain legal powers from gas extraction corporations operating within the Borough of Wilkinsburg, and nullifies state laws, permits, and other authorizations which interfere with the rights secured by this ordinance .

Section 2—Definitions

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

Section 3---Statements of Law – Rights of Wilkinsburg Residents and the Natural Environment

- (a) *Right to Water.* All residents, natural communities and ecosystems in Wilkinsburg possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the Borough.
- (b) *Rights of Natural Communities.* 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 Borough of Wilkinsburg. Residents of the Borough shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.
- (c) *Right to a Sustainable Energy Future.* All residents, natural communities, and ecosystems in Wilkinsburg possess a right to a sustainable energy future, comprised of the production and use of energy from renewable fuel sources.
- (c) *Right to Self-Government.* All residents of Wilkinsburg 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.
- (d) *People as Sovereign.* The Borough of Wilkinsburg shall be the governing authority responsible to, and governed by, the residents of the Borough. Use of the “Borough of Wilkinsburg” municipal corporation by the sovereign people of the Borough 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 infeasible right to self-governance in the community where they reside.
- (e) *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 and Corporate Legal Privileges

- (a) It shall be unlawful for any corporation to engage in the extraction of natural gas within the Borough of Wilkinsburg, with the exception of gas wells installed and operating at the time of enactment of this Ordinance.

(b) Corporations in violation of the prohibition against natural gas extraction, or seeking to engage in natural gas extraction 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.

(c) Corporations engaged in the extraction of natural gas shall not possess the authority or power to enforce State or federal preemptive law against the people of the Borough of Wilkinsburg, or to challenge or overturn municipal ordinances adopted by the Borough Council of Wilkinsburg, 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.

(d) 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 Ordinance or deprive any Borough resident(s), natural community, or ecosystem 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 Borough of Wilkinsburg.

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. 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 Borough of Wilkinsburg may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Allegheny County. In such an action, the Borough of Wilkinsburg shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees.

(c) Any Borough resident shall have the authority to enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Allegheny County. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees.

Section 6—Effective Date and Existing DEP 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 commercial extractions of natural gas in Wilkinsburg regardless of the date of any applicable DEP 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 pursuit of happiness. 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 Borough 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. 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 the Borough of Wilkinsburg or their elected officials.

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 Borough Council of Wilkinsburg 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 9—Repealer

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

ENACTED AND ORDAINED this ____ day of _____, 2010, by the Borough Council of Wilkinsburg.