

TOWN OF MOUNTAIN LAKE PARK

ORDINANCE NO. 2011-01

NATURAL GAS EXTRACTION ORDINANCE

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF MOUNTAIN LAKE PARK REGULATING THE EXTRACTION OF NATURAL GAS WITHIN THE TOWN OF MOUNTAIN LAKE PARK

Whereas, this Ordinance establishes a Bill of Rights which recognizes and secures the civil and political rights of Mountain Lake Park residents; and

Whereas, this Ordinance then bans the commercial extraction of natural gas within the Town because that extraction violates the civil rights of Mountain Lake Park residents, and because it threatens the health, safety, and welfare of residents and neighborhoods; and

Whereas, this Ordinance removes legal powers and authority from gas extraction corporations within the Town, in recognition that those legal powers are illegitimate and unjust, in that they place the rights of a corporate minority over the rights and political authority of a majority of Town of Mountain Lake Park residents; and

Whereas, this Ordinance shall be known and may be cited as “Town of Mountain Lake Park’s Community Protection from Natural Gas Extraction Ordinance;” and

Whereas, this Ordinance is enacted pursuant to the inherent right of the residents of Town of Mountain Lake Park 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 Maryland Constitution’s recognition that “all government right issues from the people.”

NOW, THEREFORE, THE MAYOR AND TOWN COUNCIL OF MOUNTAIN LAKE PARK, DOES ORDAIN AND RESOLVE THE FOLLOWING:

ARTICLE ONE

REPEAL OF PRIOR ORDINANCES AND RESOLUTIONS

All other ordinances and resolutions enacted and adopted by the Mayor and Town Council of Mountain Lake Park pertaining to the extraction of natural gas, prior to the enactment of this ordinance, are hereby repealed.

ARTICLE TWO

FINDINGS AND INTENT

Section 1. The Town of Mountain Lake Park Mayor and Town Council finds that the commercial extraction of natural gas in the Town of Mountain Lake Park 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 Town, 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 Town.

Section 2. 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 Mayor and Town 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 Mayor and Town 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.

Section 3. The Mayor and Town 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 Mayor and Town 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 Mayor and Town Council hereby adopts this ordinance, which establishes a Bill of Rights for the residents and communities of the Town, bans commercial extraction of Marcellus Shale natural gas within Town of Mountain Lake Park 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 Town of Mountain Lake Park, and nullifies state laws, permits, and other authorizations which interfere with the rights secured by this ordinance.

ARTICLE THREE

DEFINITIONS

Section 1. "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.

Section 2. "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons.

Section 3. "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 4. "Person" shall mean any natural person.

Section 5. "Town" shall mean the Town of Mountain Lake Park, a municipal corporation organized under the laws of the State of Maryland, and includes the Mayor and Town Council of Mountain Lake Park.

ARTICLE FOUR

STATEMENTS OF LAW

RIGHTS OF MOUNTAIN LAKE PARK RESIDENTS AND THE NATURAL ENVIRONMENT

Section 1. *Right to Water.* All residents, natural communities and ecosystems in The Town of Mountain Lake Park 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 Town.

Section 2. *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 Town of Mountain Lake Park. Residents of the Town, along with the municipality, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

Section 3. *Right to a Sustainable Energy Future.* All residents, natural communities, and ecosystems in The Town of Mountain Lake Park 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.

Section 4. *Right to Self-Government.* All residents of The Town of Mountain Lake Park 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.

Section 5. *People as Sovereign.* The Town of Mountain Lake Park shall be the governing authority responsible to, and governed by, the residents of the Town. Use of the “The Town of Mountain Lake Park” municipal corporation by the sovereign people of the Town 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.

Section 6. *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.

ARTICLE FIVE

PROHIBITIONS

STATEMENTS OF LAW – PROHIBITIONS NECESSARY TO SECURE BILL OF RIGHTS’ PROTECTIONS

Section 1. It shall be unlawful for any corporation to engage in the extraction of natural gas within The Town of Mountain Lake Park, 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 or any further drilling.

Section 2. 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 Maryland Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the Maryland 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 Maryland 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.

Section 3. 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 Town of Mountain Lake Park, or to challenge or overturn municipal ordinances adopted by The Town of Mountain Lake Park and 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.

Section 4. No permit, license, privilege or charter issued by any State or federal agency, 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 Town resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Maryland Constitution, the United States Constitution, or other laws, shall be deemed valid within The Town of Mountain Lake Park.

ARTICLE SIX

ENFORCEMENT

Section 1. Violation of any provision(s) of this ordinance is a municipal infraction and is subject to the Enforcement Ordinance and the fines or penalties provided in the Resolution of Fines for Municipal Infractions. The Mayor and Town Council may change the amount of fines and penalties in the Resolution of Fines for Municipal Infractions after the changes have been duly posted in accordance with the policy of the Mayor and Town Council of Mountain Lake Park for advertising for the adoption of resolutions.

Section 2. Nothing contained in this ordinance shall prohibit or prevent the Town from seeking other legal remedies, such as injunction, criminal prosecution, or damages in a civil action pursuant to Section 3 of Article 23A, Annotated Code of Maryland as amended. In such an action, Town of Mountain Lake Park shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

ARTICLE SEVEN

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 Mayor and Town 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 Town of Mountain Lake Park or their elected officials.

ARTICLE EIGHT

SEPARABILITY

Section 1. It is the intention of the Mayor and Town Council of Mountain Lake Park that each separate provision of this Ordinance shall be deemed independent of all other provisions herein.

Section 2. It is further the intention of the Mayor and Town Council of Mountain Lake Park that if any provisions of this Ordinance be declared invalid or unconstitutional, all other provisions hereof shall remain valid and enforceable.

ARTICLE NINE

ENACTMENT

IT IS HEREBY ORDAINED AND RESOLVED, this ordinance shall be in full force and effect after introduction, advertising, public hearing, and approval as provided by law.

BE IT FURTHER RESOLVED, this ordinance shall be duly advertised in accordance with the Policy for the Adoption of Ordinances by the Mayor and Town Council of Mountain Lake Park, and a public hearing on this Ordinance shall be held on the 3rd day of February, 2011, at 6:00 P. M., at the Town Hall located at 1007 Allegany Drive, Mountain Lake Park, Maryland 21550.

INTRODUCED this 6th day of January, 2011.

SECOND READING AND HEARING this 3rd day of February, 2011.

ADOPTION this 3rd day of March, 2011.

AND BE IT FURTHER RESOLVED, this Ordinance shall be effective upon adoption.

THIS ORDINANCE IS SUBJECT TO REFERENDUM AS OUTLINED IN ARTICLE 23A, SECTIONS 11 THROUGH 17.

ATTEST:

APPROVED:

Clerk Treasurer

Mayor

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember