

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MORGANTOWN ENACTING  
ARTICLE 550 OF THE CODE OF THE CITY**

The City of Morgantown hereby ordains that Article 550 of the City Code Shall be enacted as follows:

**Article 550  
Natural Gas Extraction**

**550.01 Name**

This Ordinance shall be known and may be cited as “Morgantown’s Community Protection from Natural Gas Extraction Ordinance.”

**550.02 Definitions**

- (a) “Corporation,” 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.
- (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) “Fracking” shall mean any method used to increase the inherent productivity of an oil or gas well by injecting, shooting or pumping water, chemicals, or any other liquid into a well.
- (d) “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.
- (e) “Person” shall mean a natural person, and shall specifically exclude the legal concept of a “corporation.”

**550.3 Declarations and Findings**

- (a) By this Ordinance, the City Council, on behalf of the people of Morgantown, establishes a Community Bill of Rights which recognizes and secures the locally enforceable civil and political rights of natural persons and ecosystems recognized as members of the Morgantown community, and by this Ordinance the City Council protects those rights by prohibiting the corporate extraction of natural gas within the City and its lawful jurisdiction, as set forth herein.
- (b) The City Council has found and determined that drilling for gas is an activity which adversely impacts our neighborhoods and the natural environment, interferes with the rights of citizens in the enjoyment of their civil and property rights, and has the potential to adversely affect the health, safety and welfare of persons living and working in and around areas where drilling operations exist.
- (c) The City Council has also found and determined that the process known as “directional slick-water hydro-fracturing,” or “fracking” presents an increased level of potential harm which includes, but may

not be limited to, contamination of ground water and hazards associated with the storage, treatment, transportation and disposal of the waste water or other liquids after being used in the process of fracking.

- (d) By this Ordinance, the City Council, on behalf of the people of Morgantown, removes legal powers and authority from gas extraction corporations within the City, in recognition that those exclusive legal privileges are illegitimate and unjust, in that they place the rights of those corporations over the rights and political authority of Morgantown residents.”
- (e) The City Council has also found and determined that the potential hazards associated with gas extraction may impact the citizens, environment and property within the City of Morgantown, even though the activity may take place outside the corporate limits of the City.
- (f) For the foregoing reasons, it is hereby found and determined that the powers and authority granted to the City of Morgantown in Chapter 8 of the West Virginia Code cannot reasonably and efficiently be exercised by confining the exercise thereof within the corporate limits of the municipality, and that therefore, pursuant to Chapter 8, Article 12, Section 19 of the West Virginia Code, the City of Morgantown hereby ordains that the provisions of this Ordinance shall apply within the boundaries of the City and shall extend beyond the corporate limits where stated.

#### **550.04 Statements of Law – Rights of Morgantown Residents and the Natural Environment**

- (a) *Right to Water.* All residents, natural communities and ecosystems in Morgantown 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 City.
- (b) *Rights of Natural Communities.* Natural communities and ecosystems, including, but not limited to living systems dependent on wetlands, streams, rivers, aquifers, and other water systems, as well as the air and soil, possess inalienable and fundamental rights to exist and flourish within the City of Morgantown. Residents of the City 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 of Morgantown possess a right to a sustainable energy future, for the protection of the community and quality of life for future generations.
- (d) *Right to Self-Government.* All residents of Morgantown 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.
- (e) *People as Sovereign.* The City of Morgantown shall be the governing authority responsible to, and governed by, the residents of the City. Use of the “City of Morgantown” municipal corporation by the sovereign people of the City 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 inalienable right to self-governance in the community where they reside.
- (f) *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.

**550.05 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 City of Morgantown or within one mile of the corporate limits of the City of Morgantown.
- (b) It shall be unlawful for any individual or corporation to deposit, store, treat, process, transport or dispose of “frack water,” “produced water,” or any waste product from the extraction of natural gas anywhere within the City of Morgantown, its soil, air, ground or waterways.
- (c) Corporations in violation of the prohibitions within this Ordinance, or seeking to engage in natural gas extraction shall not have the rights of “persons” afforded by the United States and West Virginia Constitutions, nor shall those corporations be afforded rights under the 1<sup>st</sup> or 5<sup>th</sup> amendments to the United States Constitution or corresponding sections of the West Virginia 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 West Virginia Constitution.
- (d) 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 City of Morgantown, or to challenge or overturn municipal Ordinances adopted by the City Council of Morgantown, 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.
- (e) 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 City resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the West Virginia Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Morgantown.

**550.06 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. 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 City of Morgantown may also enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the City of Morgantown shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees.
- (c) Any City resident shall have the authority to enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees.
- (d) The City Manager shall have the authority to direct the city solicitor, or such other legal counsel as may be employed, to institute a civil action seeking an injunction to prevent the violation of this Ordinance.

**550.07 Effective Date and Existing Permit-holders**

This Ordinance shall be effective immediately upon its enactment, at which point the Ordinance shall apply to any and all commercial extractions of natural gas in Morgantown and its lawful jurisdiction regardless of the date of any applicable permits.

**550.08 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 City Council of Morgantown 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.

**550.09 Repealer**

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

By the administration:

First Reading date: \_\_\_\_\_

Motion made by Council Member: \_\_\_\_\_

Motion seconded by Council Member: \_\_\_\_\_

Second Reading date: \_\_\_\_\_

Motion made by Council Member: \_\_\_\_\_

Motion seconded by Council Member: \_\_\_\_\_

**Adopted this twenty-first day of June, 2011.**

\_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*City Clerk*