

SPONSORED BY: COUNCIL AS A WHOLE  
AUTHORIZED BY: MEMBERS AT 8-21-2013 MEETING

DRAFT NO. 54-13

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ESTABLISHING A COMMUNITY BILL OF RIGHTS FOR NILES RESIDENTS AND NATURAL COMMUNITIES AND PROTECTING THOSE RIGHTS BY PROHIBITING NEW SHALE GAS AND OIL EXTRACTION AND RELATED ACTIVITIES; AND, BY SUBORDINATING THE PRIVILEGES BESTOWED ON CORPORATIONS TO THE RIGHTS AND GOVERNANCE OF THE PEOPLE; AND, DECLARING AN EMERGENCY

**SECTION 1. PREAMBLE**

**Whereas**, this ordinance establishes a Community Bill of Rights which recognizes and secures the civil and political rights of Niles residents, pursuant to Article I, Section 20 of the Ohio Constitution which states: “This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers, not herein delegated, remain with the people;” and

**Whereas**, this ordinance bans any new extraction of shale gas and oil, along with associated activities, including the disposal of fracking wastes into injection wells within the City because these activities violate the civil rights of Niles residents, and because they threaten the health, safety, and welfare of residents and neighborhoods of Niles; and

**Whereas**, this ordinance removes legal powers and authority from corporations in violation of its prohibitions, 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 Niles residents; and

**Whereas**, this Ordinance shall be known and may be cited as “Niles’ Community Protection from Shale Gas and Oil Extraction and Waste Disposal Ordinance;” and

**Whereas**, this Ordinance is enacted pursuant to the inherent right of the residents of Niles City to govern their own community, including, without limitation, the Declaration of Independence’s recognition that governments are instituted to secure the rights of people, and the Ohio Constitution’s recognition that “All political power is inherent in the people.”

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Niles City Council, that we hereby adopt the following ordinance, which establishes a Bill of Rights for the residents and communities of the City, bans commercial extraction of shale gas and oil within Niles City because that extraction and that waste disposal 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 Niles City; nullifies state laws, permits, and other authorizations which interfere with the rights secured by this ordinance; and imposes liabilities and fines for violations thereof.

**SECTION 2. DEFINITIONS**

- (i) “Chemical Trespass” shall mean the involuntary presence of toxic or potentially toxic chemicals and substances within a human body, natural community or ecosystem.
- (ii) “Corporation” for purposes of this ordinance, shall include any corporation, limited partnership,

limited liability partnership, business trust, limited liability company, or other business entity organized under the laws of any state of the United States or under the laws of any country.

(iii) “Disposal” shall include but not be limited to the depositing, storage, treatment, recycling, injection, or by any other means the distribution or depositing of brine, “produced water,” “frack water,” tailings or any other waste or by-product of gas or oil extraction upon, into, or onto the land, waterways, air or any area within the City of Niles.

(iv) “Ecosystem” shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as naturally occurring habitats that sustain humans, wildlife, flora and fauna, and soil-dwelling or aquatic organisms.

(v) “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing shale gas or oil or other hydrocarbons.

(vi) “Natural Communities” shall mean wildlife, flora, fauna, soil-dwelling and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within a natural ecosystem.

(vii) “Procurement of fresh water,” for purposes of this law, shall include the drawing of fresh water from anywhere within the City of Niles for the purpose of deep-well exploring for, or mining of, shale gas and oil.

(viii) “Production Activities” shall include, but not be limited to, the siting of compressors; drill rigs; pipelines; waste water storage, treatment or processing facilities; temporary housing; and any extraction, production or delivery infrastructures related to or supporting extraction of shale gas and oil.

(ix) “Shale gas” shall mean any gaseous substance derived from petroleum or so-called “natural” gas.

(x) “Toxic Substances and Potentially Toxic Substances,” for purposes of this Ordinance, shall include chemicals or chemical compounds, sludges and waste, radioactive ores, mine tailings, millings, waste liquors and radioactive progeny, particulate matter and/or gasses, that have been found to cause adverse effects to animals, humans, or ecosystems, including those chemicals, chemical compounds, sources of radiation, and all other substances deemed to be mutagenic, neurotoxic, carcinogenic, teratogenic, reproductive or developmental toxicants, or any other toxic chemical or hazardous substance identified by the Niles City Council by resolution subject to this Ordinance. The phrase shall specifically include, but shall not be limited to, frack water and materials used in, and resulting from, the unconventional process of shale gas extraction known as hydro-fracturing.

### **SECTION 3. STATEMENTS OF LAW – RIGHTS OF NILES RESIDENTS AND THE NATURAL ENVIRONMENT**

(a) *Right to Water.* All residents, natural communities and ecosystems in Niles possess a fundamental and inalienable right to maintain the sustainable access, use, consumption, and preservation of water drawn from natural water systems, springs and wells that provide water necessary to sustain life within the City.

(b) *Rights of Natural Communities.* Ecosystems and natural communities possess the right to exist and flourish. The residents of Niles have the inalienable right to enforce and defend those rights to protect all ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems.

(c) *Right to a Sustainable Energy Future.* All residents, natural communities, and ecosystems in Niles 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 and the establishment of local policies to advance this right.

(d) *Right to be Free from Chemical Trespass.* All people, natural communities and ecosystems in the City of Niles possess a fundamental and inalienable right to be free from chemical trespass resulting from the extraction of shale gas or oil.

(e) *Right to Community Self-Government.* All residents of Niles 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 neither individuals nor corporate entities and their directors and managers shall enjoy special privileges or powers under the color of state law which purports to make community majorities subordinate to them.

(f) *People as Sovereign*. Niles shall be the governing authority responsible to, and governed by, the residents of the City. The people at all times enjoy and retain an inalienable and inalienable right to self-governance in the community where they reside.

(g) *Rights as Self-Executing*. All rights delineated and secured by this law shall be self-executing and these rights shall be enforceable against individuals, corporations and governmental entities.

#### **SECTION 4. STATEMENTS OF LAW – PROHIBITIONS NECESSARY TO SECURE THE BILL OF RIGHTS**

- (a) It shall be unlawful for any corporation to engage in the extraction of shale gas or oil, within the City of Niles with the exception of gas and oil wells installed and operating at the time of enactment of this Ordinance, provided that the extraction of gas or oil from those existing wells does not involve any practice or process not previously used for the extraction of gas or oil from those wells at the time of the enactment of this Ordinance.
- (b) It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to store, transport, dispose of or process waste water, “produced” water, “frack” water, brine or other materials, chemicals or by-products used in the extraction of shale gas or oil. It shall be unlawful for any corporation, or any person using a corporation, to deposit those materials into the land, air or waters within the City of Niles. This prohibition applies specifically, but not exclusively, to “injection wells.”
- (c) It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to engage in the procurement of fresh water for the purpose of deep-well exploring for, or mining of, shale gas or oil.
- (d) Corporations and persons using corporations to engage in shale gas or oil extraction or to support any phase in the activity of shale gas or oil extraction, in a neighboring municipality, county or state shall be strictly liable for the violation of rights recognized by this ordinance, and for all harms consequently caused to natural water sources, ecosystems, human and natural communities within the City of Niles. Government agencies and municipalities that issue permits or allow activities prohibited by this ordinance shall be held liable for the violation of the rights of Niles residents, ecosystems, and natural communities if a chemical trespass results.
- (e) It shall be unlawful for any corporation or government to violate the rights recognized and secured by this ordinance.
- (f) 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 Law or deprive any City resident(s), of any rights, privileges, or immunities secured by this Law, the Ohio Constitution, the United States Constitution, or other laws, shall be deemed valid within Niles.

#### **SECTION 5. CORPORATE POWERS**

- (a) Corporations which violate this Ordinance shall not be deemed to be “persons,” nor possess any other legal rights, privileges, powers, or protections which would interfere with the enforcement of rights or prohibitions enumerated by this Ordinance. Such powers shall include the authority to assert state or federal preemptive laws in an attempt to overturn this Ordinance, and the authority to assert that the people of Niles lack the authority to adopt this Ordinance.
- (b) All laws adopted by the legislature of the State of Ohio, and rules adopted by any State agency, shall be the law of the City of Niles only to the extent that they do not violate the rights or prohibitions of this Ordinance.

**SECTION 6. LEGAL ENFORCEMENT**

- (a) Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a misdemeanor of the third degree, and, upon conviction 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) Enforcement of this Ordinance may be initiated by the City Council or its designee.
- (c) The City of Niles may also enforce this Ordinance through an action in equity. In such an action, Niles shall be entitled to recover damages and all costs of litigation, including, without limitation, experts' and attorneys' fees.
- (d) Any City resident shall have the authority to enforce this Ordinance through an action in equity. In such an action, the resident shall be entitled to recover damages and all costs of litigation, including, without limitation, experts' and attorneys' fees.
- (e) Any person who brings an action to secure or protect the rights of natural communities or ecosystems within Niles shall bring that action in the name of the natural community or ecosystem in a court of competent jurisdiction. Damages shall be measured by the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid to Niles or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

**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 and safety. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Law, or parts of this Law, shall require the City 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.

**SECTION 8. CALL FOR CONSTITUTIONAL CHANGE**

With adoption of this Ordinance, the people of the City of Niles call for binding amendment(s) to the Constitution of the State of Ohio that recognize and enforce the right to local community self-government that shall not be preempted when the municipality enacts laws that protect the health, safety and welfare of the community or assert and expand the rights of human and natural communities. Such changes shall also elevate the rights of the community above the legal privileges and protections afforded to corporations.

**SECTION 9. SEVERABILITY**

The provisions of this Law are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Law 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 Law. The City Council of Niles 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 Law even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

**SECTION 10. REPEALER**

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

**SECTION 11. EFFECTIVE DATE**

This Ordinance is hereby declared to be an emergency measure in the interest of the public health, safety and welfare for the reason that activities prohibited by this Ordinance are presently being carried on within Trumbull County, and being proposed to take place in Weathersfield Township in the near future, and it is necessary to implement the provisions of this Ordinance at the earliest possible date. As such an emergency measure, this ordinance shall take effect upon passage by Council and approval by the Mayor; otherwise, if not so passed as an emergency measure, it shall take effect from and after the earliest time provided by law.

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PRESIDENT OF COUNCIL

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, 2013, and signed by me as such mayor the \_\_\_\_ day of \_\_\_\_\_, 2013.

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MAYOR