

Ordinance supplementing the Pittsburgh Code, Title Six, Conduct, Article 1 “Regulated Rights and actions,” by adding Chapter 619 entitled “Toxic Trespass Resulting from Unconventional Natural Gas Drilling.”

## **ARTICLE VI: CONDUCT**

### **CHAPTER 619: TOXIC TRESPASS RESULTING FROM UNCONVENTIONAL NATURAL GAS DRILLING**

**Whereas**, this is an ordinance to protect the people, natural communities and ecosystems of Pittsburgh from toxic trespass; and

**Whereas**, this ordinance establishes the right of Pittsburgh residents, natural communities and ecosystems to be free from toxic trespass resulting from unconventional gas extraction techniques and the disposal of associated waste; and

**Whereas**, this Ordinance recognizes and holds liable corporations, federal, state and local governments and agencies, individuals, and representatives of neighboring municipalities, for the deposition of toxins and materials associated with unconventional extraction of natural gas that trespasses upon and violate the rights of people, natural communities and ecosystems within the City; and

**Whereas**, this Ordinance shall be known and may be cited as “Pittsburgh’s Community Protection from Toxic Trespass due to Natural Gas Extraction Ordinance;” and

**Whereas**, this Ordinance is enacted pursuant to the inherent right of the residents of the City of Pittsburgh 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.”

#### **619.01 FINDINGS AND INTENT**

The City Council of Pittsburgh possesses the authority to establish policies that protect the rights of the community. That authority includes the right to make laws that declare the involuntary intrusion of corporate-produced, mined, transported, processed and disposed-of chemicals, toxins, brines, radioactive and other harmful materials into the bodies of City residents and ecosystems of the community a form of trespass. The human and natural communities of Pittsburgh possess inalienable rights, including the right not to be trespassed upon, the right to a healthy environment, and other rights enumerated in the laws of this City, the Constitution of the Commonwealth of Pennsylvania, the Constitution of the United States of America (as well as rights not enumerated) and the people possess the power and authority to enforce the laws of their City that protect these rights.

The City Council of Pittsburgh recognizes that the unconventional process of natural gas extraction known as hydro-fracturing or “fracking” involves the injection of millions of gallons of water, mixed with hundreds of chemicals – some known carcinogens and toxins – into each gas well, and that up to forty percent of this “frackwater” returns to the surface mixed with heavy metals, highly saline water, and radioactive materials. No process exists for purifying this

material, and its disposal sometimes entails direct deposition onto the ground and into waterways, either directly or through municipal waste water facilities. In no case is the frackwater (or “produced water”) purified or stripped of toxic chemicals, salts, metals or radioactive contents.

The City Council recognizes that sufficient data and experience exist for a reasonable person to conclude that a significant percentage of both currently used and newly manufactured chemicals are harmful to humans, animals, and ecosystems, and that it is an inviolate, fundamental, and inalienable right of each person residing within the City of Pittsburgh to be free from involuntary invasions of their bodies by corporate chemicals, and by harmful materials removed from natural deposits deep underground which are then introduced into our community. Since government is the People’s means of protecting rights and enforcing laws that have that effect, and since it is the City’s responsibility to protect the health, safety, and welfare of the residents, it is inextricably the essence of that responsibility for the City to protect residents against bodily chemical trespass.

Therefore, the City Council of Pittsburgh declares that persons owning and managing corporations that manufacture, distribute, sell and deposit chemicals and chemical compounds found to be trespassing on the bodies of residents of the City, or into the ecosystems within Pittsburgh, must be held liable for those trespasses. The People of Pittsburgh also declare that the failure and refusal of the United States government and the government of the Commonwealth of Pennsylvania to ensure that corporate chemicals do not trespass on the residents of Pittsburgh makes them jointly and severally liable for those trespasses, and we further declare that neighboring states and municipalities that allow, license or permit the deposition of waste from hydro fracturing activities into the environment, which results in toxic trespass upon human and natural communities of the City of Pittsburgh, shall be held jointly and severally liable for those trespasses.

## **619.02 DEFINITIONS**

- (a) “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.
- (b) “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.
- (c) “Ecosystem” the term shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, flora and fauna, soil-dwelling or aquatic organisms.
- (d) “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons.

- (e) “Frack Water,” shall mean the mix of water, chemicals, brine and other materials used in or resulting from the process of natural gas extraction known as hydrofracturing, including but not limited to water containing brine, total dissolved solids (TDS), friction reducers, biocides, surfactants, scale inhibitors and other materials recovered from high-volume hydraulic fracturing (HVHF), slick water fracturing, and other mining and drilling techniques used to extract natural gas from the earth.
- (f) “Natural Community” 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.
- (g) “Radioactive Material” shall mean materials, as defined under Title 25, §271.1 of the Pennsylvania Code, which spontaneously emit alpha or beta particles or photons (gamma radiation) in the process of decay or transformation of the atom’s nucleus. This term shall include, but not be limited to, source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954.
- (h) “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 Pittsburgh 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 natural gas extraction known as hydro-fracturing.
- (i) “Toxic Trespass” shall mean the involuntary presence of toxic or potentially toxic chemicals and substances within a human body, natural community or ecosystem.

### **619.03 STATEMENTS OF LAW- RIGHTS OF PITTSBURGH RESIDENTS AND THE NATURAL ENVIRONMENT**

- (a) Right to a Healthy Environment. All residents, natural communities, and ecosystems of the City of Pittsburgh possess a fundamental and inalienable right to a healthy environment. That right includes the right of residents, natural communities, and ecosystems to unpolluted air, water, and soil, and the right of residents to unpolluted flora, and fauna, and the right to protect the rights of natural communities and ecosystems, upon which each resident is both intrinsically a part and dependent upon.
- (b) Right to Self. All residents of the City of Pittsburgh possess a fundamental and inalienable right to the integrity of their bodies, and to be free from unwanted invasions of their bodies by any means, including but not limited to, trespass by manufactured chemicals, toxins, pathogens, or radioactive substances and their progeny. The People at all times possess a right to privacy of their bodies and possessions against involuntary

surveillance, against unwarranted searches and inspections, and against forced or denied medical treatment.

- (c) Right to be Free from Toxic Trespass. All residents, natural communities and ecosystems in Pittsburgh possess a fundamental and inalienable right to be free from toxic trespass and to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

#### **619.04 STATEMENTS OF LAW – PROHIBITIONS AND CORPORATE LEGAL PRIVILEGES**

- (a) The deposition of toxic substances or potentially toxic substances within the body of any resident of Pittsburgh, or into any natural community or ecosystem, which results from activities prohibited by provisions of Ordinances of the City, or through negligent actions which result in a violation of any provision of this ordinance, is declared a form of trespass, and is hereby prohibited.
- (b) Corporations and persons using corporations to engage in natural gas extraction or to support the activity of natural gas 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 Pittsburgh and its jurisdiction. Government agencies and municipalities that issue permits or allow unconventional extraction of natural gas within their municipality shall be held liable for the violation of the rights of Pittsburgh residents, ecosystems, and natural communities if a toxic trespass results.
- (c) Corporations in violation of the rights of human and natural communities, and ecosystems, within Pittsburgh shall not have the rights of “persons” afforded by the United States and Pennsylvania Constitutions, nor shall those corporations be afforded the protections of the First or Fifth amendments to the United States Constitutions or corresponding provisions of the Pennsylvania Constitution, or the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution.
- (d) Corporations in violation of the rights of human and natural communities, or ecosystems, within Pittsburgh shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Pittsburgh, or to challenge or overturn municipal ordinances adopted by the City Council of Pittsburgh.
- (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 Pennsylvania Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Pittsburgh.

- (f) Persons, corporations, and other entities engaged in the manufacture, generation, sale, mining, distribution, application, transportation, use or disposal of toxic or potentially toxic substances used in unconventional natural gas extraction and detected within the body of any resident of Pittsburgh or within any natural community or ecosystem within the City shall be strictly liable for the deposition of toxic substances and potentially toxic substances into the bodies of residents of the City and within natural communities and ecosystems within the City. Persons, corporations, and other entities covered by this section shall be deemed strictly liable if one of their toxic or potentially toxic substances is discovered within the body of a City resident or within any natural community or ecosystem within the City. The municipality's showing of the existence of that substance within the body of a resident living in the City or within a natural community or ecosystems within the City, and the municipality's showing that the Defendant(s) are responsible for the manufacture, generation, sale, mining, distribution, application, transportation, use or disposal of that substance within the City or migrating into the City, shall constitute a *prime facie* showing of causation under a strict liability standard. Current and future damages resulting from the these parties' trespass shall be assumed, and the burden of proof shall shift to the culpable parties for a showing that the substance could not cause harm or contribute to causing harm, either alone or in combination with other factors, or that the parties are not responsible for the trespass of that particular substance into the body of residents of the City or within a natural community or ecosystem within the City.

#### **619.05 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 City of Pittsburgh may also enforce this Ordinance through an action brought in the Court of Common Pleas of Allegheny County. In such an action, the City of Pittsburgh shall be entitled to recover damages , as well as 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 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.
- (d) Any person who brings an action to secure or protect the rights of natural communities or ecosystems within the City of Pittsburgh 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 the City of Pittsburgh or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

#### **619.06 EFFECTIVE DATE**

- (a) This Ordinance shall be effective upon the mayor's signature or (10) days after the date of its enactment.

#### **619.07 PEOPLE'S RIGHT TO SELF-GOVERNMENT**

- (a) 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 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. 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 City of Pittsburgh or their elected officials.

#### **619.08 SEVERABILITY**

- (a) 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 Pittsburgh 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.

#### **619.09 REPEALER**

- (a) All inconsistent provisions of prior Ordinances adopted by the City of Pittsburgh are hereby repealed, but only to the extent necessary to remedy the inconsistency.