

**RESOLUTION No. 2012-**

**RESOLUTION RELATIVE TO ADOPTING CHAPTER 929 OF THE CODIFIED  
ORDINANCES ENTITLED “NATURAL GAS EXTRACTION PROHIBITION AND  
PROHIBITION AGAINST STORAGE, TRANSFER, TREATMENT OR DISPOSAL OF  
NATURAL GAS EXPLORATION AND PRODUCTION WASTES”**

**BE IT RESOLVED**, by the City Council of Niagara Falls, New York that Chapter 929 of the Codified Ordinances entitled “Natural Gas Extraction Prohibition and Prohibition Against Storage, Transfer, Treatment or Disposal of Natural Gas Exploration and Production Wastes” is hereby adopted as attached hereto.

## **CHAPTER 929**

### **NATURAL GAS EXTRACTION PROHIBITION AND PROHIBITION AGAINST STORAGE, TRANSFER, TREATMENT OR DISPOSAL OF NATURAL GAS EXPLORATION AND PRODUCTION WASTES**

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#### **929.01     PURPOSE**

After reviewing available scientific research from both opponents of natural gas extraction and natural gas extraction industry advocates, the City Council seeks to prevent the citizens of the City of Niagara Falls from the dangers associated with natural gas extraction. The purpose of this Ordinance is to prohibit the exploration for and extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and production wastes within the City of Niagara Falls in order to preserve and protect the public health, safety and welfare of the residents and neighborhoods of the City of Niagara Falls.

#### **929.02     DEFINITIONS**

As used in this chapter, these terms shall have the meanings indicated as follows:

(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 status or protections for its owners, directors, officers and/or managers.

(b) “Exploration.” Shall mean geologic or geophysical activities related to the search for natural gas or other subsurface hydrocarbons including prospecting, geophysical and

geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas deposits.

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

(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 other hydrocarbons.

(e) “Natural Gas Exploration and Production Wastes.” Shall mean any garbage, refuse, sludge, or other discarded material, including solid, liquid, semisolid or contained gaseous material that results from the exploration, drilling or extraction of natural gas.

(f) “Pollution.” Shall mean the contamination or other degradation of the physical, chemical or biological properties of land, water or air that will or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural recreational or other beneficial uses or to wildlife. Birds, fish or other aquatic life.

### **929.03 FINDING AND INTENT**

The City Council of the City of Niagara Falls declares and determines as follows:

(a) The exploration for natural gas, the extraction of natural gas and the storage, transfer; treatment or disposal of natural gas exploration and production wastes in the urban environment of Niagara Falls poses a significant threat to its residents’ health, safety and welfare;

(b) Widespread environmental and human health impacts have resulted from natural gas exploration and extraction in other areas;

(c) If natural gas exploration or extraction or the storage, transfer, treatment or disposal of natural gas exploration and production wastes were to occur within the City, this activity would endanger the health, safety and welfare of City residents through the deposit of toxins into air, soil, water, environment and the bodies of residents within the City;

(d) The protection of residents, neighborhoods and the natural environmental constitutes the highest and best use of the police and land use powers that the City possesses;

(e) Clean air and water are essential to most resources and activities in the Niagara Falls area and the quality of the air and the water will be degraded by natural gas exploration and extraction activities and/or the storage, transfer treatment or disposal of natural gas exploration and production wastes;

(f) Natural gas exploration and extraction activities and the storage, transfer, treatment or disposal of natural gas exploration and production wastes may presently or in the future cause irreparable harm to the City's water supply, pollution of the water, soil and air, and may cause cancer, lung disease, and respiratory disease;

(g) Air, soil, and water contamination may occur during the different stages of natural gas exploration and extraction operations as well as the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and such contamination could have adverse human health impacts;

(h) Spills of liquid and solid wastes that originate from the exploration, drilling and extraction of natural gas (whether onsite or during the transportation of these products to treatment and/or disposal facilities) is not uncommon and such products may come into contact with and contaminate and pollute groundwater and/or soil;

(i) A large percentage of the chemicals used in natural gas exploration and extraction and many of the constituents of natural gas exploration and production wastes are likely causes of adverse human health impacts;

(j) Natural gas exploration and production waste products are hazardous wastes within the Niagara Falls City Code;

(k) The City of Niagara Falls has the authority to prohibit the exploration and extraction of natural gas and the storage, treatment, transfer or disposal of natural gas exploration and production wastes within its border;

(l) This Ordinance addresses land use and nuisance issues and is intended to only incidentally impact the state law set forth in New York State Environmental Conservation Law Article 23;

(m) The Comprehensive Plan of the City of Niagara Falls focuses on the importance of the fresh water resources in the area. This Ordinance embraces this focus. These fresh water resources are of immense and increasing global value. The Comprehensive Plan also notes a need to reduce the total area for heavy industrial use and the need to promote sustainable “green” development. The City of Niagara Falls chooses not to permit additional sites for extraction of fossil fuels within city limits, but rather seeks to preserve areas that might otherwise be dedicated to fossil fuel extraction for other more sustainable alternative.

(n) The Niagara Falls City Council believes that the protection of residents, neighborhoods, and the natural environment is an appropriate use of its police powers. The Niagara Falls City Council therefore hereby adopts this ordinance which bans the exploration and extraction of natural gas within the City of Niagara Falls because that extraction cannot be achieved without endangering the health, safety, and welfare of the residents of the City of Niagara Falls and also bans the storage, treatment, transfer or disposal of natural gas exploration and production wastes within the City of Niagara Falls.

#### **929.04 PROHIBITION AGAINST THE EXPLORATION FOR OR EXTRACTION OF NATURAL GAS**

No person, firm or corporation shall, conduct any exploration for natural gas; drill any well for natural gas; transfer, store, treat or dispose of natural gas exploration or production wastes; or erect any derrick, building or other structure or place any machinery or equipment for such purpose within the territorial boundaries of the City of Niagara Falls.

#### **929.05 PROHIBITION AGAINST THE STORAGE, TREATMENT, TRANSFER AND DISPOSAL OF NATURAL GAS EXTRACTION WASTES**

The storage, transfer, treatment and/or disposal of natural gas exploration and production wastes are hazardous wastes within the meaning of this Code. No person, firm or corporation shall engage in the storage, transfer, treatment and /or disposal of natural gas

exploration and production wastes within the corporate boundaries of the City of Niagara Falls. No permit issued by any state or federal agency, commission or board to any person, firm or corporation, which would violate the prohibitions of this Ordinance shall be deemed valid within the City of Niagara Falls

#### **929.06     ENFORCEMENT**

This chapter shall be enforced by the Director of Code Enforcement, or his designee.

- (a) Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a violation and shall be subject to the maximum fine allowable under the Codified Ordinances of the City of Niagara Falls. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of the Ordinance found to be violated.
- (b) The City of Niagara Falls may also enforce this Ordinance through an action in equity brought in New York State Supreme Court. In such an action the City of Niagara Falls 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 the provisions of this Chapter through an action brought in New York State Supreme Court. In such an action, a resident who enjoins a violator of this Chapter from a continuing violation of this Chapter shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees from the violator.

#### **929.07     EFFECTIVE DATE AND DEC PERMIT HOLDERS**

This Ordinance shall be effective upon adoption of the City Council at which point the Ordinance shall apply to any and all extractions of natural gas in the City of Niagara Falls regardless of the date of any applicable DEC permits as well as the storage, transfer, treatment and/or disposal of natural gas exploration and production wastes within the City of Niagara Falls.

**929.08     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 section, clauses, sentences, parts, or provisions of the Ordinance.

**929.09     REPEALER**

This Ordinance shall repeal any prior inconsistent contained in the Niagara Falls City Code purporting to regulate or allow natural gas extraction or the transport, storage, treatment or disposal of natural gas exploration or extraction waste.