

Initiative Measure to be Submitted Directly to the Voters

The County Counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

An Initiative to Assert the Rights of Residents of Mendocino County in Order to Secure Clean Water, Air and Soil and Freedom From Chemical Trespass. The Proposed Ordinance Would Ban Hydraulic Fracturing "fracking", Directional and Horizontal Drilling, and Waste Injection Wells in the County of Mendocino and Invalidate Any and All Laws Contrary to this Purpose to the Extent They Effect the County of Mendocino.

The proposed ordinance would establish a "Community Bill of Rights". This Community Bill of Rights provides in part that "[a]ll residents, natural communities and ecosystems in Mendocino County possess the right to water, air and soil that is untainted by toxins, carcinogens, particulates, nucleotides, and hydrocarbons introduced into the environment through unconventional extraction of hydrocarbons."

The proposed ordinance would also ban certain types of oil/gas extraction, which are called "unconventional extraction of Hydrocarbons" in the proposed ordinance. The ordinance defines "unconventional extraction of Hydrocarbons" as "hydraulic fracturing, "fracking", directional and horizontal drilling, and waste injection wells". The proposed ordinance creates strict liability for any damages to any person or property inside Mendocino County caused by "unconventional extraction" done by anyone inside or outside of the County of Mendocino.

The initiative would also declare null and void, within Mendocino County, any State, Federal or International law or other regulation that would violate the prohibitions contained within the proposed ordinance. The ordinance would also prohibit any corporations from asserting State, Federal or International laws to overturn this ordinance. The ordinance would also repeal all provisions of any ordinance, regulation or rules of any type, adopted by Mendocino County that are inconsistent with the provisions of the ordinance.

The proposed Ordinance, if enacted, would mandate "one year in county jail and...a fine of \$10,000 for each violation". The proposed ordinance also states that "[e]ach time a pump is turned on, and each stroke of the pump shall be a separate violation" Furthermore, the ordinance would make it a violation "[e]ach day that fracking infrastructure equipment is staged or located in Mendocino County for more than 8 hours, whether or not the equipment is actually used for fracking."

The proposed ordinance would also require the County to schedule community meetings focused on changes to County government that would secure the rights of the people to local self-government if any government, corporation or natural person uses the legislature or courts to overturn any provision of the proposed ordinance.

TEXT OF PROPOSED INITIATIVE MEASURE

Whereas, We the People of Mendocino County declare that we have the right and the duty to safeguard our water both on and beneath the Earth's surface, and in the process, come together as a community to insure that local water decisions are made by local people, for the preservation of human and natural communities, whose existence depends on clean, accessible, abundant water; and

Whereas, this Ordinance establishes a Community Bill of Rights which recognizes and secures certain civil and political rights for the people of Mendocino County; and

Whereas, this ordinance bans industrial activities associated with unconventional extraction of fossil fuels, ("fracking"), because these activities violate the civil and human rights of the people of the County by threatening the health, safety, and welfare of the people, environment and future generations of Mendocino County; and

Whereas, private corporations engaged in industrial activities that violate the rights of the people of the County are wrongly recognized by international, federal and state laws as having more “rights” than the people who live in our community, and thus, recognition of corporate rights” is a denial of the rights of the residents of Mendocino County; and

Whereas, such a denial violates the California Constitution, which declares in Article I, Section 1 that All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy;” and

Whereas, in addition to corporate “rights,” the state and federal government as well as international trade laws have been routinely used by those corporations to preempt local lawmaking, thus denying the people’s right to local self-government; and

Whereas, the Board of Supervisors adopted the Mendocino County Precautionary Policy Number 43 in June 2006 which states, "Every resident, present and future, of Mendocino County has an equal right to a healthy and safe environment . . . The duty to enhance, protect and preserve Mendocino County’s environment, community health, and quality of life rests on the shoulders of local government, residents, citizen groups, and businesses alike." and

Whereas, the use of hydraulic fracturing as an unconventional hydrocarbon extraction method has been shown to inflict damage, disease and toxic trespass upon people, flora and fauna, as well as water, air and soil; and

Whereas, the people have responsibilities to future generations to secure their right to local self-government, to protect the natural environment of this County, to preserve the local ecosystems' ability to sustain agriculture, business, and tourism, as well as promote human health,

Therefore, We the People of Mendocino County hereby adopt this Community Bill of Rights Ordinance.

Section 1—Definitions

(a) “Corporations,” for purposes of this Ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, other business entity, public benefit corporation, or limited liability company organized under the laws of any state of the United States or under the laws of any country.

(b) “Ecosystem” shall include, but not be limited to, wetlands, creeks, aquifers, and other water systems, forests, and meadows, as well as naturally occurring habitats that sustain humans, wildlife, flora and fauna, and other organisms.

(c) “Extraction” shall include the digging or drilling of a well for the purposes of exploring for, developing, or producing hydrocarbons.

(d) “Hydraulic fracturing” shall mean an activity in which water, propane, diesel, chemicals and a solid proppant or any other agent are pumped into a wellbore at a rate sufficient to increase the pressure downhole to a value in excess of the fracture gradient of the formation rock, causing the formation to crack, thus allowing the fracturing fluid to enter and extend the crack farther into the formation, forming passages through which hydrocarbons can flow.

(e) “Hydrocarbons” shall mean any of numerous organic compounds, including but not limited to methane, benzene, propane, petroleum and oil.

(f) “Infrastructure” shall include, but not be limited to, pipelines or other vehicles of conveyance of hydrocarbons, and any ponds or other containments used for wastewater, “frack” water, or other materials used during, or resulting from, the process of unconventional hydrocarbon extraction.

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

(h) “Unconventional Extraction of Hydrocarbons” shall include, but not be limited to, hydraulic fracturing, “fracking,” directional and horizontal drilling, and waste injection wells. The term shall also include, but not be limited to, extraction of water from any surface or subsurface source for use in these activities; depositing, disposal, storing, transporting and processing of waste water, produced water, frack water, flow-back, brine or other materials, chemicals or by-products used in, or resulting from, these activities; the construction and siting of any new infrastructure to support these activities, as well as application for, or issuance of, permits for engaging in these activities.

Section 2—Statements of Law — A Local Bill of Rights

(a) Right to Community Self-Government. All residents of Mendocino County possess the right to a form of governance where they live which recognizes that all power is inherent in the people and that all free governments are founded on the people’s consent. Use of the Mendocino County government by the sovereign people to make law and policy

shall not be deemed, by any authority, to eliminate or reduce that self-governing authority.

(b) Right to Clean Water, Air and Soil. All residents, natural communities and ecosystems in Mendocino County possess the right to water, air and soil that is untainted by toxins, carcinogens, particulates, nucleotides, and hydrocarbons introduced into the environment through the unconventional extraction of hydrocarbons.

(c) Rights of Natural Communities and Ecosystems. Natural communities and ecosystems possess rights to exist and flourish within Mendocino County without harm resulting from the unconventional extraction of hydrocarbons.

(d) Right to be Free from Chemical Trespass. All residents, natural communities and ecosystems in Mendocino County possess the right to be free from chemical trespass resulting from the unconventional extraction of hydrocarbons.

(e) Rights as Self-Executing, Fundamental, and Unalienable. All rights delineated and secured by this Ordinance are inherent, fundamental, and unalienable; and shall be self-executing and enforceable against both private and public actors.

Section 3—Statements of Law — Prohibitions Necessary to Secure the Bill of Rights

(a) It shall be unlawful for any government, corporation or natural person to engage in the unconventional extraction of hydrocarbons within Mendocino County.

(b) The prohibitions in section 3(a) of this Ordinance shall not apply to hydrocarbon extraction wells installed and operating in the County prior to the enactment of this Ordinance, only if the extraction process used for those wells prior to the enactment of this ordinance is not changed to a different extraction process after the enactment of this ordinance.

(c) Governments, corporations, and natural persons engaged in unconventional extraction of hydrocarbons, whether in Mendocino County or in a neighboring jurisdiction or offshore location; shall be strictly liable for all harms resulting from those activities caused to natural water sources, ecosystems, people and communities within Mendocino County.

(d) It shall be unlawful for any corporation, government or natural person to violate the rights recognized and secured by this Ordinance.

(e) No permit, license, privilege, charter, or other authority issued by any State, federal or international entity which would violate the prohibitions of this Ordinance or deprive any County resident of any rights secured by this Ordinance, the California Constitution, the United States Constitution, or other laws, shall be deemed valid within Mendocino County.

Section 4—Enforcement

(a) Sec.4(a) Any corporation, government or natural person that violates any prohibition established by this Ordinance shall be guilty of misdemeanor. Those liable for a violation are each and every officer and director of any corporation that engages in fracking in Mendocino County, and each and every person who operates any fracking machinery in Mendocino County. Upon conviction the violator(s) shall be sentenced to one year in county jail and shall pay a fine of \$10,000 for each violation. Each time the pump is turned on, and each stroke of the pump shall be a separate violation, and violation of each section of this Ordinance shall count as a separate violation. Each day that fracking infrastructure equipment is staged or located in Mendocino County for more than 8 hours, whether or not that equipment is actually used for fracking, and each separate location in Mendocino County where such equipment is situated, is a separate violation. The court shall not authorize probation for any person convicted of any portion of this ordinance, under any circumstance.

(b) The County, or any resident of the County, may enforce the rights and prohibitions of this Ordinance through an action brought in any court possessing jurisdiction over activities occurring within the County. In such an action, the County or the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any action brought by either a resident of the County or by the County to enforce or defend the rights of ecosystems or natural communities secured by this Ordinance shall bring that action in the name of the ecosystem or natural community in a court possessing jurisdiction over activities occurring within the County. Damages shall be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to the County to be used exclusively for the full and complete restoration of the ecosystem or natural community.

Section 5—Enforcement — People's Rights to Superior to Corporate Power

(a) Corporations which violate or seek to violate this Ordinance, or which are alleged to have violated this Ordinance, shall not be deemed to be "persons," nor possess any other legal rights, privileges, powers, or protections which

would interfere with the rights or prohibitions enumerated by this Ordinance. “Rights, privileges, powers, or protections” shall include the power to assert state, federal or international preemptive laws in an attempt to overturn this Ordinance, and the power to assert that the people of this municipality lack the authority to adopt this Ordinance.

(b) All laws adopted by the legislature of the State of California, and rules adopted by any State agency, shall be the law of Mendocino County only to the extent that they do not violate the rights or prohibitions of this Ordinance.

Section 6—Effective Date and Existing Permit holders

This Ordinance shall be effective immediately on the date of its enactment, at which point the Ordinance shall apply to any and all actions that would violate this Ordinance regardless of the date of any applicable permit.

Section 7—People’s Right to Self-Government

Use of the courts or the legislature by any government, corporation or natural person to attempt to overturn the provisions of this Ordinance shall require the County to schedule community meetings focused on changes to County government that would secure the rights of the people to local self-government.

Section 8—California and Federal Constitutional Changes

Through the adoption of this Ordinance, the people of the County call for amendment of the California Constitution and the federal Constitution to recognize the right to local self-government free from governmental preemption and or nullification by corporate “rights” when local laws expand and are more protective of the rights of individuals, the community and nature.

Section 9—Severability

The provisions of this Ordinance are severable. If any court 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.

Section 10—Repealer

All inconsistent provisions of prior Ordinances, laws and rules adopted by Mendocino County are hereby repealed, but only to the extent necessary to remedy the inconsistency.