

**The City of San Luis Obispo, California Ordinance No. \_\_\_\_\_ of 2013**

**San Luis Obispo's Community Bill of Rights and Water Protection Ordinance**

**Whereas**, water is life – fundamental, universal, and the essence upon which all life on Earth exists; and

**Whereas**, our human existence, our prosperity, health, safety and well-being depend on the availability of clean water; and

**Whereas**, the water-poor state of California, prone to drought, already uses in excess of five times the amount of available water; and

**Whereas**, the drilling process known as hydraulic fracturing, or “fracking” for oil and natural gas requires massive amounts of water combined with a toxic combination of over five hundred chemicals injected deep underground; and

**Whereas**, scientific and anecdotal evidence has shown that unnatural, unregulated, secret patent protected chemicals used during “fracking” leach into the water cycle poisoning crops, livestock, animals and humans; and

**Whereas**, scientific evidence has shown that fracking for oil and gas is a heavy contributor to greenhouse gas emissions into the atmosphere; and

**Whereas**, we as residents of San Luis Obispo have a moral imperative to protect our local water, our health and the health and safety of future generations from harm; and

**Whereas**, human survival on planet Earth relies upon governmental policies that preserve and protect an uninterrupted source of clean water;

**Therefore**, be it ordained that the people of the City of San Luis Obispo do hereby declare our rights and responsibilities to preserve the integrity of local water as the foundation for environmental, economic and human health security by enacting San Luis Obispo's Community Bill of Rights and Water Protection Ordinance.

**Section 1—Findings and Intent**

The people of San Luis Obispo find that government serves its moral imperative when it recognizes and secures fundamental rights. The people understand that the right to life implies that other rights must be respected, guaranteed and secured, including but not limited to the right to clean water, a healthy environment, freedom from chemical trespass, and the right to protect such rights by enacting community-based legislation and policies. Specifically, life itself depends upon the availability of clean water, which is the lifeblood of any community. The people acknowledge their obligation to protect and preserve the health and integrity of their environment and water supply as beneficiaries of these natural blessings, and to fulfill their responsibilities to future generations.

The people also recognize that corporate activities associated with fracking and the disposal of fracking byproducts in San Luis Obispo would pose serious threats to the rights of residents and natural communities, while posing significant threats to their health, safety, and welfare. Widespread environmental and human health impacts have resulted from fracking related activities, including the disposal of fracking byproducts. The regulation of these activities by the state does not protect the community. Regulation of an activity specifically permits rights-violating behavior to occur, without respect for nature, the community or consent of the governed. The permitting of these activities by the State endangers the health and violates the rights of residents and natural communities by legalizing chemical trespass upon people and the

environment through the introduction of toxins into the air, soil, geology, water, environment, and bodies of residents of the City.

The people of San Luis Obispo recognize that environmental and economic sustainability cannot be achieved if the rights of community majorities are routinely overridden by corporate minorities claiming certain legal powers. For this reason, corporations chartered by the State in the name of the people are subordinated to the governance of the people. The people also recognize that sustainability cannot be achieved within a system of preemption which enables those corporations to use laws of the State to override local self-government, and which restricts the people in their communities to only that lawmaking specifically authorized by State government.

The people of San Luis Obispo believe that the protection of residents and the natural environment constitutes the highest and best use of the police powers that this City possesses. The people also believe that local legislation embodying the interests of the community is mandated by the doctrine of the consent of the governed, and the right to local, community self-government. Thus, the people of San Luis Obispo hereby adopt this ordinance, establishing a Community Bill of Rights for the human and natural communities of the City, banning fracking and related activities, including the disposal of fracking byproducts in the City; removing certain legal powers from corporations that would engage in prohibited activities within San Luis Obispo; and nullifying illegitimate laws, permits, and other authorizations which interfere with the rights secured by this Ordinance.

## **Section 2—Definitions**

Terms used throughout this Ordinance shall have the meanings as defined in this Section.

(a) “Corporation” for purposes of this ordinance, shall mean 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) “Dispose of fracking byproducts” and “Disposal of fracking byproducts” shall mean the transportation, storage or depositing into the ground via an injection disposal well, or into the water, air, soil or geology, of any “fracking byproduct,” as herein defined.

(c) “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.

(d) “Fracking” shall include the terms “induced hydraulic fracturing,” “hydrofracturing,” “slickwater fracturing,” and other related terms and shall include any high-pressure well stimulation methods, including but not limited to hydraulic, vapor, steam, or gaseous fracturing, acidization, and other high pressure stimulation methods. The term shall also refer to all processes and activities, including “horizontal” or “directional” drilling, related to the exploration for, or extraction and production of fossil fuels when these pressure stimulation methods are employed.

(e) “Fracking Byproduct” shall mean any substance associated with or resulting from “fracking” as herein defined.

(f) “Natural Community” shall mean wildlife, flora, fauna, soil-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.

(g) “San Luis Obispo” shall refer to the City of San Luis Obispo.

(h) “Trespass” as used within this Ordinance shall mean the involuntary deposition of chemicals and substances or genetically modified organisms or material within a human body, natural community or ecosystem.

(i) “Unalienable” shall mean the natural rights of life and liberty, including but not limited to rights secured here and in other laws and incapable of being alienated, sold or transferred.

### **Section 3---Statements of Law – Rights of San Luis Obispo Residents and the Natural Environment**

(a) *Right to Clean Water.* All residents, natural communities and ecosystems in San Luis Obispo possess a fundamental and unalienable right to sustainably access, use, consume, and preserve clean water drawn from natural water cycles.

(b) *Right to Self.* All residents of San Luis Obispo possess a fundamental and unalienable right to the integrity of their bodies, and to be free from involuntary invasions of their bodies by any means, including but not limited to violence, forced labor, sexual abuse, and trespass by manufactured chemicals, toxins, pathogens, genetically modified life forms or radioactive substances and their progeny.

(c) *Right to be Free from Chemical Trespass.* All residents, natural communities and ecosystems in San Luis Obispo possess a fundamental and unalienable right to be free from involuntary chemical trespass by any means, including but not limited to, trespass by manufactured chemicals, waste products and radioactive substances used in or resulting from activities prohibited by this and other laws.

(d) *Right to Healthy Environment.* All residents of San Luis Obispo possess a fundamental and unalienable right to a healthy environment, which includes the right to unpolluted air, water, soil, flora, and fauna, freedom from human-induced earthquakes and seismic events, and the right to protect the rights of natural communities and ecosystems upon which each resident is both intrinsically a part and dependent.

(e) *Rights of Natural Communities.* Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess unalienable and fundamental rights to exist and flourish within San Luis Obispo. Residents of the City, along with the municipality, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(f) *Right to Sustainable Energy Future.* All residents, natural communities, and ecosystems in San Luis Obispo 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.

(g) *Right to Self-Government.* All residents of San Luis Obispo possess the fundamental and unalienable 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.

#### **Section 4---Statements of Law – Prohibitions Necessary to Secure Bill of Rights Protections**

(a) It shall be unlawful within or beneath San Luis Obispo for a corporation or for a person using a corporation to engage in fracking.

(b) It shall be unlawful within or beneath San Luis Obispo for a corporation or for a person using a corporation to engage in the disposal of fracking byproducts.

(c) It shall be unlawful within or beneath San Luis Obispo for a corporation or for a person using a corporation to extract water from any source for use in fracking or for the disposal of fracking byproducts.

(d) Corporations and persons using corporations to engage in fracking or disposal of fracking byproducts in a neighboring municipality, county or state shall be strictly liable for all harms and violation of rights caused to natural water sources, ecosystems, human and natural communities within San Luis Obispo.

(e) No permit, license, privilege or charter issued by any State or federal agency, commission or council 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, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the California Constitution, the United States Constitution, or other laws, shall be deemed valid within San Luis Obispo.

#### **Section 5—Enforcement**

(a) Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a criminal offense and, upon conviction thereof, 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) San Luis Obispo may also enforce this Ordinance through an action in equity. In such an action, San Luis Obispo shall be entitled to recover, without limitation, all costs of litigation, including, but not limited to, expert and attorney's fees.

(c) 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 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 San Luis Obispo 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 San Luis Obispo or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community, or ecosystem. Any person or group of persons shall have standing to bring an action on behalf of affected natural communities, or ecosystems, regardless of the lack of a property relationship between those persons and the affected communities or ecosystems.

(e) Corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance, shall not have the rights of “persons” afforded by the United States and California Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the California 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 California Constitution.

(f) Corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance shall not possess the authority or power to enforce State or federal preemptive law against the people of San Luis Obispo, or to challenge or overturn municipal ordinances adopted by San Luis Obispo, 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.

### **Section 6—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 exploration for or production of petroleum and natural gas using fracking regardless of the date of any applicable permits.

### **Section 7—People’s Right to Self-Government**

The foundation for the making and adoption of this law is the people’s fundamental and unalienable 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 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 unalienable right to self-government.

### **Section 8—Call for Constitutional Change**

With adoption of this Ordinance, the people of San Luis Obispo call for binding changes to the California Constitution 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 that 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 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 People of San Luis Obispo hereby declare that in the event of such a decision, and the determination that the court's ruling is legitimate, they would have enacted this Ordinance 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 Ordinances adopted by San Luis Obispo are hereby repealed, but only to the extent necessary to remedy the inconsistency.