

Winneshiek County, Iowa's Community Rights Ordinance

A Community Bill of Rights Ordinance

ESTABLISHING A COMMUNITY BILL OF RIGHTS FOR THE PEOPLE OF WINNESHIEK COUNTY WHICH PROHIBITS INDUSTRIAL FRAC SAND EXTRACTION AND OTHER ACTIVITIES WHICH WOULD VIOLATE THE BILL OF RIGHTS, AND WHICH PROVIDES FOR ENFORCEMENT OF THIS ORDINANCE AGAINST CORPORATIONS ENGAGED IN THE EXTRACTION OF FRAC SAND

Whereas, our community finds that industrial frac sand extraction and processing are economically and environmentally unsustainable, in that they damage our public health, our property values, our roads, our bridges, and our natural environment while failing to provide real benefits to the people of this community; and

Whereas, our community finds that industrial frac sand extraction violates the rights of Winneshiek County residents, including our right to make decisions about what happens to the places where we live; and

Whereas, private corporations engaged in industrial frac sand extraction are wrongly recognized by the federal and state government 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 Winneshiek County; and

Whereas, such a denial violates the Iowa Constitution's Bill of Rights, which declares that "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it;" and

Whereas, we have responsibilities to future generations to protect the natural environment of this county as well as to secure future generations' rights to self-governance,

Therefore, We the People of Winneshiek 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, as well as naturally occurring habitats that sustain humans, wildlife, flora and fauna, and other organisms

(c) "Industrial Frac Sand Extraction" shall include but not be limited to any commercial extraction of high purity silica sand which, when processed, is suitable for use as a proppant in the enhancement of oil and gas wells; This phrase shall not include extraction of sand for uses other than extraction of hydrocarbons.

(d) "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.

Section 2 - Statements of Law – A Local Bill of Rights

(a) Right to Community Self-Government. All residents of Winneshiek 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 Winneshiek County government by the sovereign people shall not be deemed, by any authority, to eliminate or reduce that self-governing authority.

(b) Right to Clean Air, Water and Soil. All residents of Winneshiek County, along with ecosystems within the County, possess a right to clean air, water and soil.

(c) Right to a Sustainable Energy Future. All people in Winneshiek County possess the right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable and sustainable fuel sources, the enforcement of County laws and policies that halt the expansion of unsustainable energy production and use, and freedom from any industrial activity which supports continued or expanded use of fossil fuels,.

(d) Right to a Natural Climate. All residents of Winneshiek County, along with ecosystems within the County, possess a right to a natural climate,-unaltered by the use of fossil fuels that significantly contribute to climate change.

(e) Rights of Natural Communities and Ecosystems. Natural communities and ecosystems possess rights to exist and flourish within Winneshiek County.

(f) Right to Scenic Preservation. All residents of Winneshiek County possess a right to the scenic, historic and aesthetic values of the County, including unspoiled vistas and a rural quality of life.

(g) 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 within Winneshiek County for any corporation or government to engage in industrial frac sand extraction or processing.

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

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

Section 4—Enforcement

(a) Any corporation that violates any prohibition of this Ordinance shall be guilty of an offense

and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this Ordinance shall count as separate violations.

(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 – Corporate Powers Shall Be Subordinate to People's Rights

(a) Corporations which violate this Ordinance, or which seek to 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 rights or prohibitions enumerated by this Ordinance. "Rights, privileges, powers, or protections" shall include the power to assert state or federal 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 Iowa, and rules adopted by any State agency, shall be the law of Winneshiek 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 local, state, or federal permit.

Section 7—People's Right to Self-Government

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

Section 8 – Iowa and Federal Constitutional Changes

Through the adoption of this Ordinance, the people of the County call for amendment of the Iowa Constitution and the federal Constitution to recognize a right to local self-government free from governmental preemption and or nullification by corporate "rights."

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 adopted by Winneshiek County are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ___ day of _____, 2013, by Winneshiek County, Iowa.

By:

More info -

Community Rights Alliance.org (Iowa group)

CELDF.org

Paul Cienfuegos.com