

CITY OF LAS VEGAS, NEW MEXICO

WHEREAS, We, the residents in the city of Las Vegas, are a multi-cultural community with indigenous roots of Many; and

WHEREAS, We recognize the Earth, water, and air as a source of life for all living in the City of Las Vegas; and

WHEREAS, We are convinced that the quality of life for residents in the City of Las Vegas, for both the present and the future, will be destroyed if we allow at-risk exploitation and pollution of the Earth, water, and air; and

WHEREAS, we are conscious of the urgency of taking decisive action to protect our collective rights and the rights of future generations, and of ensuring a balanced environment for the survival of all residents of the City of Las Vegas; THEREFORE,

BE IT ORDAINED BY THE GOVERNING BODY OF the City of Las Vegas, NEW MEXICO. . . AN ORDINANCE PROTECTING THE RIGHT OF HUMAN COMMUNITIES, NATURE, AND NATURAL WATER, BY ESTABLISHING A LOCAL BILL OF RIGHTS FOR THE CITY OF LAS VEGAS THAT PROTECTS THE NATURAL SOURCES OF WATER FROM DAMAGE RELATED TO THE EXTRACTION OF OIL, NATURAL GAS, OR OTHER HYDROCARBONS, BY AFFIRMING THE RIGHT TO LOCAL AUTONOMY AND SELF-GOVERNANCE, AND BY ELIMINATING LEGAL PRIVILEGES AND POWERS FROM CORPORATIONS VIOLATING THE ORDINANCE.

Section 1. Name and Purpose

Section 1.1 Name: This Ordinance shall be known and may be cited as the Las Vegas Community Water Rights and Local Self-Government Ordinance.

Section 1.2 Purpose: The People of the City of Las Vegas recognize that water is essential for the life, prosperity, sustainability, and health of their community and that damage to natural groundwater and surface water sources imposes great tangible loss, to the People, natural communities and ecosystems of the City of Las Vegas, not just for today but for future generations. The People of the City of Las Vegas recognize that they may be forced, without their consent, to endure or attempt to repair harm inflicted on their environment and their vital water supply, which they have no equivalent governing authority to prevent under current state and federal law. The governing body of the City of Las Vegas adopts this Las Vegas Community Water Rights and Local Self-Government Ordinance to overcome that liability, to provide for community health and safety, to promote sustainable lifestyle, and to secure the comfort and convenience of the people.

Section 2. Authority

This Ordinance is enacted pursuant to the inherent right of the residents of the City of Las Vegas to govern their own community. That authority precedes government and is secured, without limitation, by:

The Declaration of Independence, which states that governments are instituted to secure the rights of people, deriving their just powers from the consent of the governed.

The New Mexico Constitution, Article 2, which declares that “all political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good. That section also declares that the people have the sole and exclusive right to govern themselves as a free, sovereign, and independent state and that all persons are born equally free, and have certain natural, inherent and inalienable rights and that the enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.”

Water is not just a commodity to be bought and sold, or exploited for short- term gains. Water is vital and the lifeblood of the City of Las Vegas. A sustainable future for the City of Las Vegas requires protection of the most valuable resource for the City of Las Vegas---the Water!

Section 3. Definitions

Section 3.1: “Corporation” 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.

Section 3.2: “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing oil, natural gas, or other hydrocarbons.

Section 3.3: “Horizontal drilling” shall mean intentional deviation of a wellbore from the vertical for the purpose of reaching subsurface areas laterally remote from the point where a well drilling bit or similar equipment enters the earth at the surface.

Section 3.4: “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 natural gas, oil, or other hydrocarbons can flow.

Section 3.5: “Hydrocarbons” shall mean any of numerous organic compounds, such as benzene and methane, that contain only carbon and hydrogen.

Section 3.6: “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.

Section 3.7: “Oil” shall mean any thick, flammable, yellow-to-black mixture of gaseous, liquid, and solid hydrocarbons that occur naturally beneath the earth’s surface.

Section 4. Statements of Law- Rights of the City of Las Vegas Residents and the Natural Environment

Section 4.1. Right to Water: All residents, natural communities and ecosystems in the City of Las Vegas possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the County.

Section 4.2. *Right of Water for Agriculture*: All City of Las Vegas residents possess the fundamental and inalienable right to unpolluted natural water to produce healthy food, to nourish our bodies, livestock and land and to continue “La Querencia de la Tierra,” Love of the Land.

Section 4.3. *Rights of Natural Communities*: Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Las Vegas. Residents of the City of Las Vegas, along with the council of the City of Las Vegas, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

Section 4.4. *Right to a Sustainable Energy Future*: All residents, natural communities, and ecosystems in the City of Las Vegas possess a right to a sustainable energy future, which includes, but is not limited to, the development, production, and the use of energy for renewable fuel sources.

Section 4.5. *Right to Self-Government*: All residents of the City of Las Vegas possess the fundamental and inalienable 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 4.6. *People are Sovereign*: The Las Vegas City Council shall be the governing authority responsible to, and governed by, the residents of the City of Las Vegas. Use of the City of Las Vegas municipal corporation by the sovereign people of the City of Las Vegas to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and infeasible right to self-governance in the community where they reside.

Section 4.7. *Rights are Self-Executing*: All rights delineated and secured by this ordinance shall be self-executing and these rights shall be enforceable against both public and private actors, and shall not require implementing legislation for its enforceability.

Section 5. Statements of Law- Prohibitions Necessary to Secure Bill of Rights Protections

Section 5.1: It shall be unlawful for any corporation to engage in the extraction of oil, natural gas, or other hydrocarbons within the City of Las Vegas and its watersheds.

Section 5.2: It shall be unlawful for any corporation to engage in the extraction of water from any surface or subsurface source within the City of Las Vegas and its watersheds for use in the extraction of subsurface oil, natural gas, or other hydrocarbons, or for any director, officer, owner, or manager of a corporation to use a corporation to extract water from any surface or subsurface source, within the City of Las Vegas or its watersheds, for use in the extraction of subsurface oil or natural gas or other hydrocarbons. It shall be unlawful for a corporation to import water or any other substance, including but not limited to, propane, sand, and other substances used in the extraction of oil, natural gas, or other hydrocarbons, into the City of Las Vegas or its watersheds for use in the extraction of subsurface oil, natural gas, or other hydrocarbons; or for any director, officer, owner, or manager of a corporation to do so.

Section 5.3: It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation to deposit, store, transport or process waste water, produced water, frack water, brine or other materials, chemicals or by-products used in the extraction of oil, natural gas, or other hydrocarbons, into the land, air or waters within the City of Las Vegas.

Section 5.4: It shall be unlawful for any individual or corporation, or any director, officer, owner, or manager of a corporation to use a corporation to construct or maintain infrastructure related to the extraction of oil, natural gas, or other hydrocarbons within the City of Las Vegas or its watersheds. Infrastructure shall include, but not be limited to, pipelines or other vehicles of conveyance of oil, natural gas, or other hydrocarbons, and any ponds or other containments used for wastewater, frack water, or other materials used during the process of oil, gas, or other hydrocarbon extraction.

Section 5.5: 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 New Mexico Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the New Mexico 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 New Mexico Constitution.

Section 5.6: Individuals or 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 the City of Las Vegas, or to challenge or overturn City ordinances adopted by the City of Las Vegas City Council, 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 5.7: 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 of Las Vegas resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Treaty of Guadalupe Hildalgo, the New Mexico Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Las Vegas.

Section 6. Enforcement

Section 6.1: The City of Las Vegas may enforce this Ordinance through an action in equity brought in any court of competent jurisdiction. In such an action, the City of Las Vegas shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney fees.

Section 6.2: Any City of Las Vegas resident shall have the authority to enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the resident shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney fees.

Section 6.3: Any person or municipality who brings an action to secure or protect the rights of natural communities or ecosystems within the City of Las Vegas 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 Las Vegas or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

Section 7. Effective Date and Existing State Permit Holders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all extractions of oil, natural gas, or other hydrocarbons in the City of Las Vegas regardless of the date of any applicable governmental permits.

Section 8. City Council Action and Voter Referenda to Repeal Ordinance

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 the pursuit of happiness. Accordingly, this Ordinance suspends the operating rules of the Las Vegas City Council when the question of repealing this Ordinance is introduced. Repeal of this ordinance shall require both a unanimous vote of the Las Vegas City Council voting in favor of the repeal of the ordinance, and a voter referenda following that vote which shall make the repeal effective only if two thirds of the Las Vegas City Council electorate vote to repeal the ordinance.

Section 9. People’s Right to Self-Government -Preemption

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 Las Vegas 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 City of Las Vegas 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 Las Vegas or their elected officials.

Section 10. 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 Las Vegas City Council 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.

Section 11. Repealer

All inconsistent provisions of prior Ordinances adopted by the Las Vegas City Council are hereby repealed, but on to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ____ day of 2012, by the Las Vegas City Council.