

The City of Asheville, North Carolina
Climate Bill of Rights Ordinance

Establishing a Community Climate Bill of Rights for the People of the City of Asheville, North Carolina, which Prohibits Activities and Projects that would Violate the Bill of Rights, and which Provides for a Sustainable Energy Policy and Enforcement of the Bill of Rights Against Private and Public Corporations Engaged in Prohibited Activities and Projects

Whereas, this community finds that continued reliance on fossil fuels violates the right of the people to a climate that is conducive to the health, safety, and welfare of its citizens,

Whereas, this community finds that continued reliance on fossil fuels, including contractual municipal obligations to purchase such unsustainable fuels, or energy generated by such fuels, violates the rights of the City of Asheville residents, including our right to make decisions about what happens to the places where we live; and

Whereas, private and public corporations that engage in fossil fuel extraction, transportation, processing, consumption, and depositing of waste 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 people of the City of Asheville; and

Whereas, such denials violate the inherent right of people to engage in local community self-government; the guarantees of the North Carolina Constitution; and the guarantees of the Declaration of Independence and the United States Constitution; and

Whereas, the 1776 North Carolina Constitution established certain rights that can never be abrogated, including these first three provisions in the Declaration of Rights:

- I. That all political power is vested in and derived from the people only.
- II. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.
- III. That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; and

Whereas, this ordinance establishes a Community Bill of Rights to further recognize the right of the people to local community self-government in the City of Asheville, and secures that right by prohibiting those activities that would violate this local bill of rights;

Therefore, We the People of the City of Asheville hereby adopt this Community Bill of Rights Ordinance.

Section 1 – Definitions

(a) **Corporation:** for purposes of this Ordinance, means any corporation, limited partnership, limited liability partnership, business trust, public benefit corporation,

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business entity, or limited liability company organized under the laws of any state of the United States or under the laws of any country.

(b) **Sustainable energy:** means energy produced from sources other than fossil fuels or nuclear fission. The phrase includes, but is not limited to, energy derived from the sun, hydropower, closed and open loop geothermal systems, and wind flows, as well as installations, siting, and measures taken to retrofit buildings and other infrastructure to improve energy efficiency and energy conservation.

(c) **Toxic Substances and Potentially Toxic Substances:** for purposes of this Ordinance, “toxic substances and potentially toxic substances” includes chemicals or chemical compounds, sludges and waste, radioactive ores, mine tailings, millings, waste liquors and radioactive progeny, particulate matter and/or gasses, that have been found to cause adverse effects to animals, humans, or ecosystems, including those chemicals, chemical compounds, sources of radiation, and all other substances deemed to be mutagenic, neurotoxic, carcinogenic, teratogenic, reproductive or developmental toxicants, or any other toxic chemical or hazardous substance identified by the Asheville City Council by resolution subject to this Ordinance. The phrase shall specifically include, but shall not be limited to, waste and by-products from fossil fuel exploration, extraction, production, development, and distribution.

(d) **Toxic Trespass:** means the involuntary presence of toxic or potentially toxic chemicals and substances within a human body, natural community or ecosystem.

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

(a) *Right to Local Community Self-Government.* All residents of the City of Asheville possess the right to a form of governance where they live that recognizes that all power is inherent in the people and that all free governments are founded on the people’s consent. Use of the municipal government of “the City of Asheville” by the people for the making and enforcement of this law, and others that secure more protective standards than does state and federal law for the protection of fundamental rights, shall not be deemed, by any authority, to eliminate, limit, or reduce that sovereign right. The power of municipal government for the protection and enforcement of rights shall perpetually remain with the people living within the municipal jurisdiction.

(b) *Right to a Healthy Climate.* All residents and ecosystems of the City of Asheville possess a right to a climate that is safe, stable, and promotes public health and welfare, which shall include the right to be free from all activities that significantly interfere with that right, including the expansion of reliance on unsustainable energy sources through investment in, contracting for, and siting of infrastructure for the extraction, production, processing, transportation, and distribution of fossil fuels.

(c) *Right to Clean Air, Water, and Soil.* All residents of the City of Asheville, along with natural communities and ecosystems within the City, possess the right to clean air, water, and soil. That right shall include the right to be free from toxic trespass, and to

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sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

(d) *Right to Scenic Preservation.* All residents of the City of Asheville possess a right to the scenic, historic, and aesthetic values of the City. That right shall include the right of the residents of the City to be free from the products and toxic by-products of waste from fossil fuel exploration, extraction, production, transportation, development, and distribution that would significantly impair scenic, historic, and aesthetic values.

Suzannah: It seems to me that scenic, historic and aesthetic are subject to a wide range of interpretation and may detract from the bill.

(e) *Rights of Natural Communities and Ecosystems.* Natural communities and ecosystems within the City of Asheville, including, but not limited to, rivers, streams, aquifers, and flora and fauna, possess the right to exist, flourish, and naturally evolve.

(f) *Right to a Sustainable Energy Future.* All residents of the City of Asheville possess the right to a sustainable energy future, which includes, but is not limited to, the production, distribution, and use of energy from renewable and sustainable fuel sources, the control of production, distribution, and pricing of sustainable energy, the right to establish local sustainable energy policies to further secure this right, and the right to be free from energy extraction, production, distribution, and use, that may adversely impact the rights of human or natural communities. This right shall specifically include without limitation the right to be free from the siting or operation of natural gas processing facilities and pipelines and the right to divestment by the City of Asheville from contracts and legal arrangements that obligate the City to continued reliance on fossil fuels. This right shall also include without limitation the right to enact local sustainable policies, building codes, and other legislation to defend the right to a sustainable energy future.

(g) *Right to Enforce.* All residents of the City of Asheville possess the right to enforce the rights and prohibitions secured by this Ordinance, which includes the right of City residents to intervene in any court where any action concerning the rights and prohibitions of this Ordinance has been brought.

(h) *Right to Defense.* Residents of the City of Asheville possess the right to have the City government of Asheville defend this law on the basis that a constitutional right of local community self-government exists, that this law is an assertion of that right as it seeks to expand the rights of the people of the City of Asheville, and that the doctrines of ceiling preemption, municipal subordinancy to state government, or corporate “rights” unconstitutionally violate the right of the residents of the City of Asheville to local community self-government.

(i) *Rights as Self-Executing.* All rights delineated and secured by this Ordinance are inherent, fundamental, and inalienable, and shall be self-executing and enforceable against both private and public actors.

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

(a) It shall be unlawful within the City of Asheville for any corporation or government to site or invest in the installation of any new infrastructure producing or using energy that is not sustainable energy, or to increase transportation, distribution, or consumption of energy that is not sustainable energy. This prohibition includes the purchase of and contracting for fossil fuels, and energy produced by fossil fuels, or processed in, transported through, and distributed by such new infrastructure.

(b) It shall be unlawful within the City of Asheville for any corporation or government to engage in transporting, processing, or depositing of waste from fossil fuel exploration, extraction, production, transportation, development, and distribution, or from nuclear fission power production. This prohibition shall not include the transportation and delivery of fossil fuels to existing customers and end users or regular maintenance and repair of existing infrastructure serving existing customers.

(c) Corporations and persons using corporations to engage in the extraction, transportation, processing, consumption, development, and distribution and siting of infrastructure for these purposes, as well as the transportation and depositing of waste from fossil fuel exploration, extraction, production, transportation, development, and distribution, in a neighboring municipality, county or state shall be strictly liable for the violation of rights recognized by this ordinance, and for all harms consequently caused to natural water sources, ecosystems, human and natural communities within the City of Asheville and its jurisdiction. Government agencies and municipalities that issue permits or allow the activities banned by this Ordinance within their municipality shall be held liable for the violation of the rights of Asheville residents, ecosystems, and natural communities if a toxic trespass results.

(d) It shall be unlawful within the City of Asheville for any corporation or government to violate the rights recognized and secured by this Ordinance.

(e) No permit, license, privilege, charter, or other authority issued by any state or federal entity which would violate the prohibitions of this Ordinance or any rights secured by this Ordinance, the North Carolina Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Asheville.

Section 4 -- Statements of Law – Sustainable Energy in Defense of Right to a Healthy Climate

(a) *Unsustainable Energy Use:* Use of energy within the City of Asheville not generated from sustainable energy production shall be reduced by at least 20% every three years, through the installation and use of sustainable energy, disinvestment from unsustainable energy enterprises, and the implementation and execution of annual sustainable energy plans, until all government facilities and infrastructure, residents, and businesses within the City no longer consume or trade in unsustainable energy.

(b) *Annual Sustainable Energy Plan* The City of Asheville shall adopt and publish an annual Sustainable Energy Plan, identifying specific measures and benchmarks to which

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the City shall be committed during each fiscal year to achieve the targeted reduction in unsustainable energy consumption. The goal of these Sustainable Energy Plans shall be for all persons in the City of Asheville to use 80% sustainable energy, in all sectors (electricity, heating/cooling, transportation and industry) by the year 2030 and 100% by 2050. Revenue sources and application procedures for sustainable energy assistance shall be included in the annual Plan. Accordingly, the City Council shall appoint a Sustainable Energy Committee, made up of residents of the City, to survey City residences and businesses to make an assessment of energy consumption that is based on unsustainable energy. Residential and locally owned business participation in each survey shall be voluntary, but only residences and locally owned businesses that participate in the assessment shall be eligible for assistance from the City in transitioning to sustainable energy systems.

(c) *Financing Sustainable Energy Transition* The City of Asheville shall adopt all necessary financial measures, including the issuance of general revenue bonds, to assist and subsidize residents to transition from unsustainable energy use to sustainable energy use, and to create local jobs to attain that transition. These means and methods may, at the discretion of the City Council, include tax credits, subsidies or other financial incentives, financing for private residences and locally owned and operated businesses, to be applied by the recipients to the financing of a transition to sustainable energy systems, and for no other purpose.

Section 5—Enforcement

(a) Any corporation or government that violates any provision 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 a separate violation.

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

(c) Any action brought by either a resident of the City of Asheville or by the City 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 City. 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 City to be used exclusively for the full and complete restoration of the ecosystem or natural community.

(d) If the City of Asheville fails to enforce or defend this law, or a court fails to uphold this law, any person may enforce their rights as enumerated in this Ordinance. If nonviolent direct action is taken to enforce these rights, law enforcement personnel

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employed by the City of Asheville shall be prohibited from surveilling, detaining, or arresting persons enforcing those rights.

Section 6 – Enforcement - Corporate Powers

(a) Corporations that violate this Ordinance, or that seek to violate this Ordinance, shall not be deemed to be “persons,” nor possess any other legal rights, privileges, powers, or protections that would interfere with the rights or prohibitions enumerated by this Ordinance. “Rights, privileges, powers, or protections” includes 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 City lack the authority to adopt this Ordinance.

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

(c) If the City of Asheville fails to enforce or defend this law, or a court fails to uphold this law’s limitations on corporate power, the law shall not be affected by the failure to enforce or defend, or by the failure to uphold the limitations on corporate power, and any person may then enforce the rights and prohibitions of the law through direct action. If enforcement through direct action is commenced, this law shall prohibit any private or public actor from filing a civil or criminal action against those participating in direct action. If filed in violation of this provision, the applicable court must dismiss the action promptly, without further filings being required of direct action participants. “Direct action” as used by this provision shall mean any activities or actions carried out to directly enforce the rights and prohibitions contained within this law.”

Section 7—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 8—People’s Right of Local Community Self-Government

Use of the courts or the North Carolina legislature in attempts to overturn the provisions of this Ordinance shall require the City of Asheville Council to convene community meetings in which every qualified elector shall have a vote to enact proposed changes to local governance that will secure the rights asserted by this Ordinance regardless of state or federal preemption. Each qualified elector shall have authority to propose such changes, and more than one change shall be eligible to be placed on a convenient ballot available to each said elector. In the case of contradictory or incompatible proposals, the one garnering the greater number of votes shall become law within the City of Asheville.

Section 9 – State and Federal Constitutional Changes

Through the adoption of this Ordinance, the people of the City of Asheville call for amendment of the North Carolina Constitution and the federal Constitution to recognize a

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right of local community self-government free from governmental preemption and or nullification by corporate “rights.”

Section 10—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 11 - Repealer

All inconsistent provisions of prior Ordinances adopted by the City of Asheville are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ____ day of _____, 2017, by the City Council of the City of Asheville, North Carolina.

By:

