

Community Rights-Based Ordinance

ESTABLISHING A COMMUNITY BILL OF RIGHTS ORDINANCE FOR THE PEOPLE OF ASHLAND, NEW HAMPSHIRE, WHICH PROHIBITS ACTIVITIES AND PROJECTS THAT WOULD VIOLATE THE BILL OF RIGHTS, AND WHICH PROVIDES FOR ENFORCEMENT OF THE BILL OF RIGHTS AGAINST CORPORATIONS AND GOVERNMENTS ENGAGED IN THOSE ACTIVITIES AND PROJECTS

Preamble

When people and communities find that laws ostensibly enacted to protect them, and to foster their health, prosperity, and fundamental rights, do neither; and that the very air, land, and water – on which their lives and happiness depend – are threatened, it becomes necessary for the people to reclaim, reaffirm, and assert their inherent and unalienable rights.

Therefore, we the People of Ashland, in the State of New Hampshire, affirm the inherent and unalienable right of self-government in the American Declaration of Independence, namely:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

And, we the People of Ashland affirm Amendment IX of the Constitution of the United States of America, which states: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

And, we the People of Ashland affirm Part First, Bill of Rights, of the New Hampshire State Constitution, which states:

Article 1 declares: All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.

Article 2 declares: All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness.

Article 8 declares: All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them.

Article 10 declares: Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

Article 14 declares: Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property or character, to obtain right and justice freely, without being obliged to purchase it; completely and without denial; promptly, and without delay, conformably to the laws.

And since all power of governance is inherent in the people, we, the people of Ashland, New Hampshire, declare and enact the following civil rights law.

Section 1 – Declarations

We the people of Ashland declare that unsustainable energy projects violate the right of Ashland residents, including our right to make decisions about what happens to the places where we live.

We the people of Ashland find that certain commercial energy projects are economically and environmentally unsustainable, in that they damage property values and ecosystems, place the health of residents at risk, threaten the quality of natural systems within the Town, while failing to provide real benefits to the people of this community.

We the people of Ashland find the current environmental laws allow state-chartered corporations to inflict damage on local ecosystems that cannot be reversed, violating the rights of residents to protect their community and the rights of ecosystems to exist.

We the People of Ashland declare that we have a duty to safeguard the water both on and beneath the Earth's surface, and in the process, safeguard rights of people with the community of Ashland and the rights of ecosystems of which Ashland is a part.

We the people of Ashland find that private corporations engaged in the siting of unsustainable energy projects are wrongly recognized by the federal and state governments as having more "rights" than the people who live in our community, and that recognition of corporate "rights" is therefore, a denial of the rights of the residents of Ashland.

We the people of Ashland find that our current system of government fails to recognize our self-governing authority because corporations may assert their "rights" to override our laws; our local government and elected representatives can be preempted by the state or federal government even when our elected representatives act to protect our community's health, safety, and welfare; and our local government is banned from adopting and enforcing laws that have not been authorized by the state; and

We the people of Ashland assert that the operation of these and other such legal doctrines renders our local government unable to protect our rights, and the application of such doctrines renders us powerless to exercise our self-governing authority; and

We the people of Ashland possess the inherent, fundamental, constitutional, and unalienable right to change our current system of government because that system of government fails to recognize our self-governing authority and so it has been rendered unable to secure our rights; and

We the people of Ashland hereby declare that our current system of government is illegitimate and that we adopt this law to create a new system of local governance that recognizes our self-governing authority while securing and protecting our rights.

Therefore, we the people of Ashland hereby exercise our right of local community self-government to adopt this Community Bill of Rights law, in order to secure and enforce our fundamental human, political, civil, and environmental rights.

Section 2 – Definitions

- (a) “Corporation,” for purposes of this law, includes any corporation, or other business entity, organized under the laws of any state or any country.
- (b) “Ecosystem” for the purposes of this Ordinance, includes, but is not limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, people, flora and fauna, including soil dwelling and aquatic organisms.
- (c) “Toxic Waste Disposal” for the purposes of this Ordinance, includes, but is not limited to, the physical deposition of toxic waste onto land, or into waterways within Ashland.
- (d) “Toxic Waste” for the purposes of this Ordinance, includes, but is not limited to, waste products from petroleum refining, coal combustion products, sediment sludge, heavy metals, chemical residue from manufacturing processes, mining residuals, radioactive wastes, or any other waste material that poses a present or potential hazard to human health or ecosystems.
- (e) “Exploratory Data Collection” for the purposes of this Ordinance, includes, but is not limited to, surface or subsurface field investigations, engineering, or geotechnical work, used to support the progression or permitting of an unsustainable energy system. This phrase shall include, but not be limited to, test pits, trenching, boring holes, in situ tests, obtaining soil samples, geologic mapping, geophysical methods, or photogrammetry.
- (f) “Energy Systems” means those systems producing, generating, distributing, transmitting, or transporting energy and power.

- (g) “Unsustainable Energy Systems” means energy systems that are either: (1) controlled by state and federal energy policies, rather than community controlled energy policies; (2) industrial scale hydroelectric power and industrial scale wind power when it is not locally and municipally owned and operated; (3) energy systems using fossil fuels (including but not limited to coal, natural gas, petroleum products), nuclear and radioactive materials, or other fuel sources that are non-renewable or which produce, during operation, toxins and substances that cause injury to humans or ecosystems, or that are in violation of residents’ rights secured under this Ordinance or under other laws. The term shall not include combustion of wood and wood products or the use of propane, kerosene, heating oil, coal, or natural gas when combustion of those fossil fuels is used solely to generate on-site heat or power and the energy produced is not commercially sold, transmitted, or distributed.

Section 3 – Statements of Law – A Community Bill of Rights

- (a) Right to Sustainable Energy Future. All residents of the Town of Ashland have a right to a sustainable energy future in which energy decisions are made by the community, and in which fuel sources used to generate energy are renewable and sustainable. Existing energy systems that do not comply with this right may continue, but shall develop into compliance with this right.
- (b) Right to Scenic Preservation. All residents of the Town of Ashland possess a fundamental and inalienable right to protect and preserve the scenic, historic and aesthetic values of the town, including clean air, pure water, healthy soil, and unspoiled vistas that provide the foundation for tourism and economic sustainability for local businesses. Residents and local representatives have the authority to enact and enforce legislation that guarantees an exercise of local self-government that is protective of these rights.
- (c) Right to Peaceful Enjoyment of Home. All residents of the Town of Ashland possess a right to the peaceful enjoyment of our homes, free from interference, intrusion, nuisances, or impediments to access and occupation, caused by corporations or by government permitting of rights-violating activities.
- (d) Right to Pure Water. All residents and ecosystems of the Town of Ashland possess a right to pure water untainted by toxic waste.
- (e) Right to Clean Air. All residents and ecosystems in Ashland possess a right to clean air untainted by toxic waste.
- (f) Rights of Ecosystems. Ecosystems within Ashland possess the right to exist, flourish, and naturally evolve.
- (g) Governmental Legitimacy. All legitimate governments in the United States owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities. Any system of

government that becomes destructive of those ends is not legitimate, lawful, or constitutional.

- (h) *Right of Local Community Self-Government*. The people of Ashland possess both a collective and individual right of self-government in their local community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, political, civil, and environmental rights.
- (i) *Right to Exercise the Right of Self-Government*. The people of Ashland possess the right to exercise their right of local community self-government in any manner as to them seems effective. This includes the right to use their municipal corporation, charter, initiative lawmaking, town meeting, and other institutions or mechanisms to make and enforce law. The making and enforcement of law by the people through such institutions and mechanisms shall not nullify, infringe, or otherwise affect the people's right of local community self-government. This right shall include the right of the people of Ashland, their government, and their elected officials to be free from civil and criminal liability for making and enforcing laws pursuant to their right of local community self-government.
- (j) *Rights as Self-Executing*. All rights secured by this law are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and public actors. Further implementing legislation shall not be required for the Town of Ashland, natural persons domiciled in Ashland acting either individually or collectively, or the ecosystems protected by this law, to enforce all of the provisions of this law.

Section 4 – Statements of Law – Prohibitions Necessary to Secure the Bill of Rights

- (a) It shall be unlawful within Ashland for any corporation or government to engage in land acquisition necessary for the construction of an unsustainable energy system, or to engage in construction or siting of any structure to be used in the operation of an unsustainable energy system, except:
 - (1) Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Ashland and those utility corporations providing electricity, for the provision of electricity within the Town of Ashland;
 - (2) Corporations operating under valid and express contractual provisions in agreements entered into between residents of the Town of Ashland and those corporations for electricity, when the electricity is used solely for on-site residential, household, agricultural, or commercial facilities, within the Town of Ashland; and
 - (3) Electricity from existing, permitted operations located within the Town of Ashland, which were operating prior to the date of enactment of this Ordinance.
- (b) It shall be unlawful within Ashland for any corporation or government to engage in toxic waste disposal as defined by this Ordinance.

- (c) It shall be unlawful within Ashland for any corporation or government to engage in exploratory data collection as defined by this Ordinance.
- (d) Persons using corporations or government to engage in toxic waste disposal in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Ashland from those activities, and for all harms to ecosystems within Ashland.
- (e) It shall be unlawful for any corporation or government to violate the rights recognized and secured by this law.
- (f) No government shall recognize as valid any permit, license, privilege, charter, or other authorization, issued to a corporation by any state or federal entity that would enable the corporation to violate the rights or prohibitions of this law.

Section 5 – Enforcement

- (a) Any corporation or government that violates any provision of this law shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law. Each day or portion thereof, and each violation of each section of this law, shall count as a separate offense.
- (b) The Town of Ashland, or any natural person domiciled in Ashland, may enforce all of the provisions of this law through an action brought in any court possessing jurisdiction over activities occurring within Ashland. In such an action, the Town of Ashland or the natural person shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.
- (c) Ecosystems within Ashland may enforce all of the provisions of this law through an action brought by the Town of Ashland or natural person domiciled in Ashland in any court possessing jurisdiction over activities occurring within Ashland, in the name of the ecosystem or natural community as the real party in interest. 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 Town of Ashland to be used exclusively for the full and complete restoration of the ecosystem or natural community.
- (d) If the Town of Ashland 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 non-violent 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 non-violent activities or actions carried out to directly enforce the rights and prohibitions contained within this law.

- (e) In any lawsuit concerning the validity of this Community Bill of Rights, natural persons domiciled in Ashland shall have the right to intervene on behalf of themselves and on behalf of ecosystems and natural communities to assert and defend the validity of this law. As the Town of Ashland necessarily represents the interests of the community as a whole, and as the Town of Ashland might be subject to political forces beyond the control of natural persons domiciled in Ashland, the Town of Ashland’s support for or defense of the Community Bill of Rights in such lawsuit shall not be deemed to render the Town of Ashland adequate to represent fully the interests of such intervening persons, and so shall not be a ground upon which to deny such intervention by such persons.

Section 6 – Enforcement – Corporate Powers

- (a) Corporations that violate this law shall not be deemed to be “persons” to the extent that such treatment would infringe the rights or prohibitions enumerated by this law, nor shall they possess any other legal rights, powers, privileges, immunities, or duties that would infringe the rights or prohibitions enumerated by this law, including the power to assert state or federal preemptive laws in an attempt to overturn this law, or the power to assert that the Town of Ashland, or the people of Ashland, lack the authority to adopt this law, or the power to assert that the Town of Ashland, its officials, or any resident of Ashland are liable for damages to the corporation.
- (b) Within the Town of Ashland, corporate claims to “future lost profits” shall not be considered property interests under the Ordinance, and thus, shall not be recoverable by corporations seeking those damages. Any corporate expenditures or investment whether past, present or future, pertaining to an unsustainable energy project, shall be the sole responsibility of the corporation and shall not be recoverable by corporations seeking those damages.
- (c) All laws adopted by the legislature of the State of New Hampshire or by Congress, and rules adopted by any State or Federal agency, shall be the law of Ashland only to the extent that they do not violate the rights or prohibitions of this law, or limit the authority of the Town of Ashland or the people of Ashland to adopt and enforce greater protections of these rights than afforded by the state legislature or by Congress.

Section 7 – Sustainable Energy Policy

The Town shall implement a Sustainable Energy Policy that provides a plan for the community’s reduction in use of power from unsustainable energy systems, within a time frame agreed to by the residents, to be decided by popular vote at Town Meeting.

Section 8 – Interpretation

Any reviewing court shall liberally interpret this law’s provisions to achieve the goals stated in the Preamble and Section 1, Declarations. Nothing in this Ordinance shall be interpreted to restrict fundamental rights of individuals, their communities, or nature already secured by the New Hampshire constitution, the United States constitution, or international law; and nothing in this Ordinance shall be interpreted to weaken protections for individuals, their communities, or nature, as provided by state, federal, international, or constitutional law.

Section 9 – Effective Date and Existing Permit Holders

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

Section 10 – People’s Right of Self-Government

Use of the courts or the New Hampshire legislature in attempts to overturn the provisions of this law shall require the Town of Ashland to convene community meetings, beginning within one month of any adverse court ruling or adoption of adverse legislation. These meetings shall be open only to natural persons domiciled in Ashland; shall be focused on further changes to local governance that would secure the people's right of local community self-government, and they shall be held as frequently as is necessary to achieve the aims of this law. The presumption in all cases shall be that the rights secured by this law remain in effect and that it is the duty of the Town of Ashland and its officers to secure and enforce these rights by all peaceful means.

Any action to annul, amend, alter, or overturn this Ordinance by the Board of Selectmen of the Town of Ashland or any other agent or agency of the Town shall be prohibited unless such action is approved by a prior Town Meeting at which a majority of the residents of the Town attending the Town Meeting approve such action.

Section 11 – State and Federal Constitutional Changes

Through the adoption of this law, the people of Ashland call for amendment of the New Hampshire Constitution and the federal Constitution to expressly recognize a right of local community self-government free from governmental restriction, governmental preemption, or nullification by corporate “rights.”

Section 12 – Severability

The provisions of this law are severable. If any court decides that any section, clause, sentence, part, or provision of this law 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 law. This law would have been enacted without the invalid sections.

Section 13 – Repealer

All inconsistent provisions of prior laws adopted by the Town of Ashland are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ____ day of _____, 2018, by the Town of Ashland, New Hampshire.

By:

Signature _____ Print _____

Signature _____ Print _____

Signature _____ Print _____

Signature _____ Print _____

Signature _____ Print _____

Attest: _____ Print _____