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Bethel Corporate Toxics and Local Self-Governance Ordinance

Ordinance
 City of Bethel
 Ordinance No. _____ of 2007

AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND NATURAL ENVIRONMENT OF THE CITY OF BETHEL AND ITS WATERSHED BY BANNING CORPORATIONS FROM TRANSPORTING, USING, DISCHARGING, OR GENERATING CERTAIN TOXIC SUBSTANCES WITHIN THE CITY AND ITS WATERSHED; BY REMOVING LEGAL POWERS FROM CORPORATIONS WITHIN THE CITY OF BETHEL AND ITS WATERSHED, BY RECOGNIZING THE ENFORCEABLE RIGHTS OF BETHEL RESIDENTS AND NATURAL COMMUNITIES WITHIN THE CITY AND ITS WATERSHED; AND BY PROVIDING FOR THE ENFORCEMENT OF THIS ORDINANCE.

Section 1—Name

This Ordinance shall be known and may be cited as the “Bethel Corporate Toxics and Local Self-Governance Ordinance.”

Section 2—Authority

This Ordinance is enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the City of Bethel to self-government, as recognized by the Declaration of Independence and Article 1, §21 of the Constitution of Alaska, and by authority granted to the municipal government of the City of Bethel by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

The Declaration of Independence, which declares that the people of the City of Bethel are born with “certain unalienable rights” and that governments are instituted among people to secure those rights;

The Alaska Constitution, Article 1, Section 2, which declares that “all political power is inherent in the people” and that “all government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole,”

The Alaska Constitution, Article 1, Section 1, which declares that all “persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry” and that “all persons are equal and entitled to equal rights, opportunities, and protection under the law,” and,

The Alaska Constitution, Article 10, Section 1, which declares that people have a right to "maximum local self-government" and that "a liberal construction shall be given to the powers of local government units."

Section 3—Findings and Purpose

In support of the enactment of this Ordinance, the City Council of the City of Bethel finds and declares:

That the Bethel City Council finds that the health and welfare of the citizens of the City of Bethel is of great and primary concern to the Council;

That the Bethel City Council has the authority to ban corporations from transporting, generating, discharging, and using certain hazardous chemicals and substances within the City of Bethel and its corresponding watershed, with the recognition that activities within the City's watershed in the surrounding unorganized Borough has the potential to adversely impact the residents of the City of Bethel and natural systems upon which those residents rely;

That corporate transportation, generation, discharge, and use of hazardous chemicals and substances within the city limits of Bethel, and within the watershed within which Bethel is situated, has the potential to severely and irreparably harm the health and welfare of the citizens of Bethel, especially given that corporations operate with limited liability, and that Directors and Officers of the corporation cannot be held liable for damages or harms caused by the corporation under the current structure of law;

That the Bethel City Council possesses a legitimate governmental interest in seeking to reduce the possibilities for spills and any other toxic contamination within the city limits of the City of Bethel and within the watershed of which the City of Bethel is a part;

That the Bethel City Council recognizes that toxic chemicals and hazardous substances discharged by accident or by design within Bethel municipal limits as well as into the Yukon Kuskokwim region could greatly affect traditional and subsistence fishing and hunting for a large number of persons living within this region of Alaska; and that many people rely on the Kuskokwim watershed for their drinking water; and

That the Bethel City Council recognizes that the claimed "rights" and legal protections of corporations operating within the City of Bethel and its watershed are incompatible with the ideal of local self-governance because assertion of those "rights" would normally interfere with the protection of residents' health, safety, and welfare, and that there exists a need to recognize that the rights of people, and the natural systems upon which people depend for survival, are dominant to the claimed "rights" of those corporations.

Section 4—Interpretation

Anyone interpreting, implementing, or applying this Ordinance shall give priority to the findings and purposes stated in Sections 2 and 3 over such accounting and business terms characterized as "economy," "efficiency," and "scheduling factors."

Section 5—Definitions

The following terms shall have the meanings defined in this section wherever they are used in this Ordinance.

Corporation: Any corporation organized under the laws of any state of the United States or under the laws of any country. The term shall also include any 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. The term shall also include any business entity in which one or more owners or partners is a corporation or other entity in which owners, directors, officers and/or managers possess limited liability attributes.

Engage in: An activity in which a corporation generates, transports, discharges, or uses toxic chemicals or hazardous substances, and any transaction in which the corporation obtains title to, or control over, those toxic chemicals or hazardous substances. The phrase shall also include any activities by agents, officers, or directors of the corporation, in which those actors engage in activities related to the generation, transportation, discharge, or use of toxic chemicals or hazardous substances as identified within this Ordinance.

Ordinance: The Bethel Corporate Toxics and Local Self-Governance Ordinance

Person: A natural person, or an association of natural persons that does not qualify as a corporation under this Ordinance.

Substantially Owned or Controlled: A person, corporation, or other entity substantially owns or controls another person, corporation, or other entity if it has the ability to evade the intent of this Ordinance by using that person, corporation, or other entity to violate the provisions of this Ordinance within the City of Bethel or its watershed.

Toxic Chemicals and Hazardous Substances: Chemicals or chemical compounds that have been found to cause adverse effects to animals, humans, or ecosystems, including those chemicals or chemical compounds deemed to be mutagenic, neurotoxic, carcinogenic, or reproductive and developmental toxicants.

Section 6—Statements of Law – Rights of Residents of the City of Bethel and Rights of Natural Systems within the City of Bethel and the City of Bethel's Watershed.

Section 6.1. Residents of the City of Bethel possess the right to use the waters and lands of the Yukon Kuskokwim as sources of drinking water, for traditional fishing and hunting, and for other purposes vital to the people of Bethel, and interference with that right through the deposition of toxic chemicals or hazardous substances into those lands or waters, by accident or design, shall be deemed a violation of this right.

Section 6.2. Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the City of Bethel and its watershed.

Section 6.3. All residents of the City of Bethel possess a fundamental and inalienable right to the integrity of their bodies, and thus, have a right to be free from unwanted chemical invasions of their bodies. The corporate deposition of toxic chemicals or hazardous substances within the body of any resident of the City of Bethel is declared a form of trespass and a danger to public health and safety, and is hereby prohibited.

Section 7—Statements of Law

Section 7.1: No corporation shall engage in the transportation, use, discharge, or generation of toxic chemicals or hazardous substances that directly or indirectly releases those toxic chemicals or hazardous substances into, or causes or contributes to any degradation of any surface or subsurface water, or tributary thereto that is utilized by humans for drinking water or by salmon for the spawning, rearing, migration, or propagation of the species, within the boundaries of the City of Bethel or its watershed.

Section 7.2. No corporation shall engage in the transportation or generation of quantities of more than fifty (50) gallons per thirty (30) day period of the following industrial toxic chemicals and hazardous substances: chlorinated solvents, polychlorinated biphenyls, organophosphate pesticides, organochlorine pesticides, carbamate insecticides, polybrominated diphenyl ethers (PBDEs), polychlorinated dioxins and dibenzofurans, pyrethroid pesticides, cyanide, or any other toxic chemical or hazardous substance identified by the City Council of the City of Bethel by resolution as subject to this ban on transportation or generation. Any corporation transporting or generating any significant quantities of those toxic chemicals and hazardous substances shall report those activities to the City of Bethel to enable the enforcement of this provision of the Ordinance.

Section 7.3: Within the City of Bethel and its watershed, corporations shall not be "persons" under the United States or Alaska Constitutions, or under the laws of the United States, Alaska, or the City of Bethel, and so shall not have the rights of persons under those constitutions and laws. In addition, within the City of Bethel and its watershed, no corporation shall be afforded the privileges, powers, and protections of the Contracts Clause or Commerce Clause of the United States Constitution, or of similar provisions from the Alaska Constitution.

Section 7.4: It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems within the City of Bethel and its watershed. The City of Bethel, along with any resident of the City or of its watershed, shall have standing to seek declaratory, injunctive, compensatory, and punitive relief for damages caused to natural communities and ecosystems within the City and its watershed, regardless of the relation of those natural communities and ecosystems to Bethel residents or the City of Bethel itself. Bethel residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

Section 7.5. Any employee, agent, or representative of any State or federal regulatory agency, commission, or board who issues a permit, license, privilege or charter 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 provisions of this Ordinance or deprive any Bethel resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Alaska Constitution, the United States Constitution, or other laws, shall be liable to the parties injured and shall be responsible for the payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the City of Bethel for restoration of those natural communities and ecosystems.

Section 7.6. Any corporation engaging in, or planning to engage in, the generation, use, discharge, or transportation of toxic chemicals or hazardous substances within the City of Bethel or its watershed shall not possess limited liability attributes for the purposes of the enforcement of this Ordinance. Directors, officers, owners, and/or managers of that corporation shall be personally and strictly liable for violations of this Ordinance, and damages caused by the violation of this Ordinance.

Section 7.7. No permit, license, privilege, or charter issued by any State or federal regulatory 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 provisions of this Ordinance or deprive any Bethel resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Alaska Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Bethel.

Section 7.8. Claims for "lost future profits" shall not be recognized as a property right or as a category of recoverable damages for actions occurring within the City of Bethel or its watershed.

Section 8—Administration

This Ordinance shall be administered by the Bethel City Council.

Section 9—Enforcement

Section 9.1: Any person, corporation, or other entity that violates any provision of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by the appropriate Court, shall be sentenced to pay a fine of \$_____ for first-time violations, \$_____ for second-time violations, and \$_____ for each subsequent violation, and shall be imprisoned to the extent allowed by law for the punishment of summary offenses.

Section 9.2: A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance that is found to be violated.

Section 9.3: The City of Bethel may also enforce this Ordinance through an action in equity brought in a Court of appropriate jurisdiction. In such an action, the City of Bethel shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 9.4: All monies collected for violation of this Ordinance shall be paid to the Treasurer of the City of Bethel.

Section 9.5: Any person, corporation, or other entity that violates, or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from doing business within the City of Bethel. This prohibition applies to that person's, corporation's, or other entity's parent, sister, and successor companies, subsidiaries, and alter egos; and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

Section 9.6: Any resident of the City of Bethel or its watershed shall have the authority to enforce this Ordinance through an action in equity brought in a Court of appropriate jurisdiction. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 10—Civil Rights Enforcement

Section 10.1: Any person acting under the authority of a permit issued by a state or federal agency, any corporation operating under a State charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a State charter or certificate of authority to do business, who deprives any Bethel resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Alaska Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation to satisfy that liability, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the City of Bethel for restoration of those natural communities and ecosystems.

Section 10.2: Any Bethel resident shall have standing and authority to bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and Bethel residents, as recognized by provisions of this Ordinance.

Section 11—Effective Date and Existing Permits and Approvals

This Ordinance shall be effective immediately, at which point the Ordinance shall apply to any and all permits and approvals granted by other governments regardless of the date of those permits or approvals.

Section 12—People's Right to Self-Government

The foundation for the making and adoption of this law is the fundamental and inalienable right to the residents of Bethel to govern themselves. Any attempts to use state or federal levels of government – judicial, legislative, or executive - to preempt, amend, alter, or overturn this Ordinance or parts of this Ordinance, or to intimidate the people of the City of Bethel or their elected officials, shall require the City Council of Bethel to hold public meetings that explore the adoption of other measures that expand local sovereignty and the ability of residents to protect their fundamental and inalienable right to govern themselves.

Section 13—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 City of Bethel 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 14—Repealer

All inconsistent provisions of prior Ordinances adopted by the City of Bethel are hereby repealed, but only to the extent necessary to remedy the inconsistency. The Bethel City Council hereby authorizes and adopts the aforementioned subject to future amendments for specific commitments or repeals by subsequent City Councils.

Effective Date. This chapter shall become effective upon passage by the Bethel City Council.

ENACTED THIS _____ DAY OF _____, 2007, BY A VOTE OF ___ IN FAVOR AND ___ OPPOSED.

Daniel C. Leinberger, Mayor
ATTEST:

Sandra Modigh, City Clerk