

# CLIMATE BILL OF RIGHTS

## ORDINANCE

### §1.0 - FINDINGS

*Whereas*, the 1776 North Carolina Constitution established certain rights that can never be surrendered or confiscated, 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*, North Carolina General Statute § 160A-174 (General ordinance-making power) subsection (a) states that “A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances”; and

*Whereas*, the same statute, under subsection (b) states: “The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition. (1971, c. 698, s. 1.)”; and

*Whereas*, the state of North Carolina has not, in General Statute § 160A-174 or in any other law declared the violation of unalienable rights to be legal, nor would such a statute be legal; so it is resolved:

*We the People of Asheville, North Carolina*, find that global environmental destruction, which includes degradation to the climate, ecosystems, flora, fauna, land, water, as well as people and communities, constitutes an emergency that threatens our very survival;

*We the People of Asheville, North Carolina*, find that continued dependence on fossil fuels, biogas, biomass, and unjust energy systems significantly contributes to global environmental destruction and continuing social inequity; and therefore,

*We the People of Asheville, North Carolina*, declare that within the City we have a right to a healthy climate, and that right is violated by the extraction, production, waste disposal, distribution, sale, and contracting related to fossil fuels.

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## §2.0 - ASHEVILLE, NORTH CAROLINA, CLIMATE BILL OF RIGHTS

It shall be unlawful for any corporation, and any person using corporate property, including its directors, officers, owners, legal representatives, or managers to violate or interfere with the rights enumerated herein. Further, it shall be unlawful for any person purporting to exercise the authority of government to assist any corporation, or any person using corporate property, or their representative, to violate or interfere with the rights enumerated herein, including but not limited to the issuance of permits, licenses, charters or permissions to engage in activities that would violate or interfere with these rights.

**Right of Self-Government.** All residents of The City of Asheville possess a right of self-government, which includes, but is not limited to, the following rights: first, the right to a system of local government founded on the consent of the people of the municipality; second, the right to a system of local government that secures their rights; and third, the right to alter any system of local government that lacks consent or fails to secure and protect the people's rights, health, safety, and happiness. This system of self-governance acknowledges the authority of the community to govern the behavior of corporations that propose projects that may be at odds with the interests of the community. This

right of self-governance is limited by the prohibition against enacting municipal laws that violate the rights of natural persons and nature.

**Right to a Healthy Climate.** All residents of the City of Asheville and all-natural communities and ecosystems within the City possess a right to a climate system capable of sustaining human and other-than-human societies and healthy natural ecosystems, which includes the right to be free from all activities that infringe that right, including but not limited to the installation of any new infrastructure that produces or uses energy derived from fossil fuels, biogas or biomass, as well as the construction of hotels that require displacement of natural ecosystems for their construction. The purchase of and contracting for energy by the City from fossil fuels produced by and supported by infrastructure not already in place or under construction shall also be deemed a violation of this right and is prohibited. The construction of hotels that require the displacement of natural ecosystems for their construction shall also be deemed a violation of this right.

**Right to Clean Air, Water, and Soil.** All residents of the City of Asheville and all-natural communities and ecosystems within the City possess the right to clean air, water, and soil, which includes the right to be free from the deposition of toxic contaminants into the air, water, and soil. This right shall apply without exception to all residents of Asheville, the Swannanoa River, and French Broad River watersheds, and the urban tree canopy.

**Right of Freedom from Toxic Trespass.** The deposition of toxic substances or potentially toxic substances, either directly or indirectly, within the body of any resident of the City of Asheville, or into any natural community or ecosystem, is hereby declared a form of trespass and is prohibited. It shall be unlawful for any corporation to engage in the distribution, sale, transportation, or disposal of toxic and potentially toxic substances within the City of Asheville. The deposition of toxic substances or potentially toxic substances, either directly or indirectly, within a neighborhood whose residents are majority people of color and/or low-income shall be deemed a violation of this law, and further, shall be deemed an instance of environmental racism and a hate crime.

**Right to Environmental Justice.** Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of

race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance;”. The U.S. Environmental Protection Agency (EPA) has concluded that “many minority, low income, tribal, and indigenous people in the United States have experienced higher levels of environmental pollution and other social and economic burdens” that “have led to poorer health outcomes, as well as fewer financial or advocacy opportunities.” These policies are hereby adopted by the City of Asheville and shall be determining factors in the awarding of punitive and compensatory damages for violation of this right.

**Rights of Ecosystems and Natural Communities.** Ecosystems and natural communities, including but not limited to forests, urban forests, rivers, wetlands, and subsurface water systems, within the City of Asheville, as well as the Swannanoa River and French Broad River watersheds, possess the right to naturally exist, flourish, regenerate, evolve, and be restored, which includes the right to be free from all activities that threaten these rights, including but not limited to toxic trespass and over development for the use of humans at the exclusion of other species. Specific violations of these rights include clearing the land of living flora and fauna for the siting of dwellings intended or used for hotels.

**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, sourcing, and use of energy from renewable and sustainable fuel sources. In addition, all residents of the City of Asheville possess the right to control the production, distribution, and pricing of sustainable energy, the right to establish local sustainable energy policies to further secure this right, as well as the right to be free from energy extraction, production, distribution, and use, that may adversely impact the rights of human or natural communities. Sustainable energy sources do not include fossil fuels, biogas, biomass, corporate-controlled wind or solar or nuclear fuels. This right shall also include the establishment of a Sustainable Energy Policy by the City of Asheville to reach 100% use of renewable energy by 2030.

### **Right to Protection from Governmental and Corporate Interference.**

All residents of the City of Asheville and the City of Asheville possess the right to enforce this law free of interference from corporations, other business entities, and governments. That right includes the right of residents to be free from ceiling preemption, which means state prohibitions against local laws that protect the rights of residents and ecosystems more strictly than the state allows. This law expands rights-protections for people and nature above those provided by less-protective state, federal, or international law.

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### **§3.0 - ENFORCEMENT**

1. The violation of any of the rights and other provisions of this law by any person using a corporation to do so, including its directors, officers, owners, legal representatives, or managers, or by any person purporting to exercise the authority of government, by authorizing activities that violate the rights and other provisions established by this law, is subject to a civil penalty in an amount of \$10,000 per day of violation.
2. Any corporation, person using a corporation, or person purporting to exercise the authority of government, as well as the government itself, that violates any provision of this law shall be liable for punitive and compensatory damages. Compensatory damages shall be measured by the cost of restoring the rights and fully repairing the damage to the resident, neighborhood, and the ecosystem to its state before the rights violation or injury, and shall be paid and held in trust, to be used exclusively for the full and complete restoration of the rights and correction of the harms inflicted. Due to the historic cumulative impact of environmental racism in minority or low-income communities protected by Title VI of the federal Civil Rights Act of 1964, 100% of any punitive damages awarded for violation of the rights of a community of color and their local ecosystems shall be distributed as determined by the electors residing in the impacted community, with independent legal counsel financed fully by the City of Asheville. Any contractor employed for this purpose shall be a minority-owned and managed business.

3. Ecosystems within the City of Asheville may enforce or defend this law through an action brought in the name of the ecosystem as the real party in interest, represented by one or more natural persons residing within the neighborhood/ecosystem bringing such legal action.

4. Any resident of the City of Asheville may enforce or defend the provisions of this law in any appropriate court. Any resident, and any ecosystem, within the City of Asheville, also has standing and the right to intervene in any action concerning this law in order to enforce or defend it, and in such an action, the City of Asheville shall not be deemed to adequately represent their particularized interests.

5. If the City of Asheville fails to enforce or defend this law, or a court fails to uphold this law, any person may enforce this law through nonviolent direct action. Residents involved in the enforcement of these rights through nonviolent direct action are immune from prosecution. "Nonviolent direct action" as used by this provision means any activities carried out to directly enforce the prohibitions of this law.