

ORDINANCE NUMBER _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA CREATING A “SUSTAINABILITY BILL OF RIGHTS”

SECTION 1. NAME.

This Ordinance shall be known and may be cited as the “Sustainability Bill of Rights” Ordinance.

SECTION 2. PREAMBLE AND PURPOSE.

(a) This Sustainability Bill of Rights advances the City’s 2006 Sustainable City Plan, which states, among other things, that:

(i) “Sustainability requires that our collective decisions as a city allow our economy and community members to continue to thrive without destroying the natural environment upon which we all depend. A healthy environment is integral to the city’s long-term economic and societal interests. In achieving a healthy environment, we must ensure that inequitable burdens are not placed on any one geographic or socioeconomic sector of the population and that the benefits of a sustainable community are accessible to all members of the community.”

(ii) “Local environmental, economic and social issues cannot be separated from their broader context. This relationship between local issues and regional, national and global issues will be recognized and acted upon in the City's programs and policies. The City's programs and policies should therefore be developed as models that can be emulated by other communities.”

(iv) “Santa Monica is committed to protecting, preserving and restoring the natural environment. City decision-making will be guided by a mandate to maximize environmental benefits and reduce or eliminate negative environmental impacts.”

(v) “The City will ensure that each of its policy decisions and programs are interconnected through the common bond of sustainability”

(b) In furtherance of these goals and policies, the City of Santa Monica:

(i) recognizes the rights of Santa Monica residents, and of natural communities and ecosystems within Santa Monica, to sustainable water, food, energy, air, soil, waste treatment, economic and climate systems;

(ii) recognizes that various legal rights and powers of, and actions by, corporations and other business entities may have the potential to interfere with the rights of the people of Santa Monica and of natural communities and ecosystems within Santa Monica to sustainability; and that, therefore, measures to secure and protect the rights of people and natural communities and ecosystems within Santa Monica to a sustainable future must not be impeded by those actions; and

(iii) recognizes that certain asserted preemptive governmental powers and actions may have the potential to interfere with the rights of the people of Santa Monica and of natural communities and ecosystems within Santa Monica to sustainability; and that, therefore, measures to secure and protect the rights of people and natural communities and ecosystems within Santa Monica to a sustainable future must not be impeded by such powers and actions.

(c) Through this Sustainability Bill of Rights, the people of Santa Monica and the City exercise the City's police powers under Article 11 of the California Constitution to address the increasingly serious threats to the health, welfare and safety of City residents, and to the natural communities and ecosystems within the City, posed by unsustainable regional, state, national and global use of the natural world.

(d) The overall purpose of this Sustainability Bill of Rights is to change current economic, political, and legal structures to structures that recognize and respect the rights of people and natural communities and ecosystems within Santa Monica to achieve sustainable water, food, energy, air, soil, waste treatment, economic and climate systems, and that advance self-sufficiency within the City to help achieve those goals.

SECTION 3. DEFINITIONS.

(a) "Corporation and other business entities." 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.

(b) "Sustainable water sources." Those water sources that are drawn consistent with natural water cycles, the withdrawal of which does not violate the rights of the public to sufficient clean, affordable, and accessible water from sustainable water sources for human consumption, cooking, and sanitary purposes necessary for the health and well-being of the individual and family, and which does not violate the rights of natural communities or ecosystems to exist, persist, and maintain themselves.

(c) "Sustainable renewable fuel sources." Those fuel sources generated by on-going natural processes, including, but not limited to, energy generated from the sun, flowing water, wind flows, biogas, and geothermal heat flows. The term shall not include hydromodification that impacts the rights of affected natural communities and ecosystems as recognized by this Sustainability Bill of Rights. The term shall not include fossil fuel sources, nuclear fission, or any derivative of those fuels, and shall not include hydrofracked sources of energy.

(d) "Sustainable food systems." Those food systems that use farming practices that do not violate the rights of natural communities and ecosystems as recognized by this Sustainability Bill of Rights, that provide a living wage for farming and harvesting families, that meet all applicable state and federal pollution control requirements for farming practices, and that grow, produce, or process foodstuffs within five hundred miles of the City of Santa Monica.

(e) "Natural communities and ecosystems within Santa Monica." For purposes of this Ordinance, this term encompasses marine waters within the boundaries of the City of Santa Monica, and associated intertidal, subtidal and beach habitats; and as applicable, groundwater aquifers and atmospheric systems within City boundaries. As historic natural ecosystems are restored and reclaimed within the City, those ecosystems shall be included within this definition.

(f) "Damage to natural communities and ecosystems." This term and equivalent terms shall include but not be limited to alteration, removal, destruction, eradication, or other actions

inflicted upon natural communities and ecosystems, in whole or in part, that bring about the cessation of the ability of natural communities and ecosystems to exist and flourish independent of human intervention.

SECTION 4. AUTHORITY.

(a) This Ordinance is enacted pursuant to the inherent right of the residents of the City of Santa Monica to govern their own community. That authority precedes government and is secured, without limitation, by the authority granted to the Charter City of Santa Monica and by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

- (i) The California Constitution, Article 1, Section 1, which declares that “[a] people by nature are free and independent and have inalienable rights,” including “enjoying and defending life and liberty”;
- (ii) The California Constitution, Article 2, Section 1, which declares that “[a]ll political power is inherent in the people,” that “government is instituted for [the people’s] protection, security, and benefit,” and that the people “have the right to alter or reform [government] when the public good may require”; and
- (iii) The California Constitution, Article 11, Section 7, which reserves the development and enforcement of police powers to counties and cities.

SECTION 5. RIGHT TO SUSTAINABLE WATER SOURCES.

(a) The people of the City of Santa Monica possess a fundamental and inalienable right to sufficient clean, affordable, and accessible water from sustainable water sources for human consumption, cooking, and sanitary purposes necessary for the health and well-being of the individual and family. Natural communities and ecosystems within Santa Monica possess a fundamental and inalienable right to clean water from natural water cycles and sources that is adequate in amount to support their rights as described in Section 11.

(b) To further secure and protect these rights, the City Council shall take action consistent with the September 2010 recommendation by the Santa Monica Environmental Task Force to adopt and ensure implementation of a goal of 100% self-sufficiency in local water supply by 2020. In doing so, the City shall facilitate as appropriate the use of recycled water, captured rain water, and gray water systems consistent with state and federal water quality laws. The City also shall augment stormwater infiltration and water conservation efforts within the City, including through the use of native plant landscape requirements, and shall enhance the use of appropriate water pricing to further advance sustainable use leading to self-sufficiency.

- (c) The City shall also take action to support and advance, through Resolutions or other means:
- (i) the full implementation of the California Constitution’s ban on “waste and unreasonable use” in order to create adequate water allocations for aquatic ecosystems, and
 - (ii) a fundamental change in state law to assign rivers and other aquatic ecosystems legal water rights, grounded in science-based flow needs.

SECTION 6. RIGHT TO SUSTAINABLE ENERGY.

(a) The people of the City of Santa Monica, and natural communities and ecosystems within Santa Monica, possess a right to a sustainable energy future, which includes, but is not limited to,

the right to advance the development, production, and use of energy from sustainable renewable fuel sources.

(b) These rights include the right to easy access to affordable public transportation that moves freely about the City, which conserves fuel by advancing ride sharing.

(c) To further secure and protect these rights, the City Council shall take action to adopt and ensure implementation of a goal of 100% sustainable net renewable energy used in the City by 2020, with 20% of the energy from local, sustainable renewable sources. The City shall facilitate and incentivize as appropriate the use of locally-based, renewable energy sources, and shall investigate the use of appropriate energy pricing to advance sustainable energy use leading to self-sufficiency.

(d) To further secure and protect this right, the City Council shall take action to adopt and ensure implementation of a goal that 100% of all commercial and municipal buildings greater than 10,000 square feet eligible for LEED™ certification shall achieve LEED™ certification or its equivalent after January 1, 2012.

(e) The City Council further shall take action to adopt and ensure implementation of a goal of 50% increase by 2020 in total miles of bike paths and city arterial streets with bike lanes over 2005 levels.

SECTION 7. RIGHT TO CLEAN AIR, WATER AND SOIL.

(a) The people of the City of Santa Monica possess a right to clean indoor and outdoor air, clean water, and clean soil that pose a negligible health risk to the public. Natural communities and ecosystems within Santa Monica similarly have the right to clean air, water, and soil that pose a negligible ecological and toxicological risk.

(b) To further secure and protect these rights, the City Council shall take action to ensure that all significant emission sources in Santa Monica are identified by 2013. The City Council further shall take action to adopt and ensure implementation of a goal that by 2025 the percentage of Santa Monica residents or workers who live or work within a half-mile of a significant emission source shall be reduced by half as compared with 2010 levels. For purposes of this Ordinance, a “significant emission source” refers to sources of toxic air contaminants and other air emissions that pose a measureable threat to human health and the environment.

(c) To further secure and protect these rights, the City Council shall take action to adopt and ensure implementation of a goal of zero warnings or closures at any Santa Monica beach location during dry weather months, no more than three days of warnings or closures at any Santa Monica beach location on non-rainy days during wet weather months, and no more than 17 days of warnings or closures at any Santa Monica beach location on rainy days during wet weather months, by 2021.

SECTION 8. RIGHT TO SUSTAINABLE FOOD SYSTEMS.

(a) The people of the City of Santa Monica possess a right to a sustainable food system, which

shall include the right to access, buy, produce, and process food using sustainable food systems. Natural communities and ecosystems within Santa Monica similarly have the right to a sustainable system of nourishment.

(b) To further secure and protect these rights, the City Council shall take action to adopt and ensure implementation of a goal of 25% of the food sold in the City originating from sustainable food systems by 2020, and 50% originating from sustainable food systems by 2030. The City shall also investigate and implement the use of economic and other incentives to advance the purchase of organic vegetables and fruits in the City.

SECTION 9. RIGHT TO SUSTAINABLE WASTE DISPOSAL SYSTEMS.

(a) The people of the City of Santa Monica possess a right to sustainable, comprehensive waste disposal systems that do not degrade the environment locally, regionally or globally.

(b) To further secure and protect these rights, the City Council shall take action to adopt and ensure implementation of a goal of “zero waste” landfilled by 2020, where zero waste is defined as at least 90% diversion from the landfill and where waste-to-energy does not count towards the 90% diversion target.

SECTION 10. RIGHT TO A SUSTAINABLE CLIMATE.

(a) The people of the City of Santa Monica, and natural communities and ecosystems of Santa Monica, possess the right to a sustainable, natural climate unaltered by fossil fuel emissions.

(b) To further secure and protect these rights, the City Council shall take action to adopt and implement a goal of preventing and addressing the impacts of climate change in the City, particularly with respect to sea level rise. These actions shall include, but not be limited to:

- (i) prohibiting new development or re-development in areas projected to be subject to sea level rise impacts, based on peer-reviewed science, within the lifespan of the project, with consideration during this determination of elevated water levels from storms, high tides, and extreme weather events such as El Niño-Southern Oscillation events;
- (ii) incentivizing climate adaptation strategies that enhance the natural adaptive capacity of coastal and estuarine ecosystems to sea level rise and storm surges;
- (iii) limiting the use of sea walls, levees, barriers, and other coastal armoring structures as responses to sea level rise to cases of protecting essential public infrastructure where no non-structural protection measure or less environmentally damaging alternative can be applied;
- (iv) ensuring the preservation of public access to the California coast in light of projected sea level rise, consistent with (iii);
- (v) providing accessible, affordable, low-carbon emission, mass transportation options for residents and workers; and
- (vi) additional actions needed to achieve the greenhouse gas reduction targets in the Santa Monica Sustainable City Plan.

SECTION 11. RIGHTS OF NATURAL COMMUNITIES AND ECOSYSTEMS WITHIN THE CITY OF SANTA MONICA.

(a) Natural communities and ecosystems within Santa Monica possess inalienable and

fundamental rights to exist, persist, maintain themselves, and regenerate their own vital cycles, structure, functions, and evolutionary processes.

(b) Residents of the City shall possess legal standing to enforce against violations of these rights on behalf of natural communities and ecosystems within Santa Monica.

(c) To further secure and protect these rights, and to promote broad-based recognition of the significance of natural communities and ecosystems, the City Council shall take action to increase awareness of the City's natural heritage through such initiatives as restoring historic ecosystems and ecosystem connections, using signage and art to illustrate the history of developed ecosystems, requiring the use of native plants on all City property being re-landscaped, and incentivizing and/or requiring the use of native landscaping on private property.

SECTION 12. ACCOUNTABILITY.

To further secure and protect the rights enumerated within this Sustainability Bill of Rights, and to facilitate implementation of this Sustainability Bill of Rights, the City shall investigate and report to the public on the extent to which City financial, purchasing and accounting practices encourage and discourage self-sufficiency and sustainability, and which practices violate or potentially violate the rights of natural communities and ecosystems to exist, persist, maintain themselves, and regenerate their own vital cycles, structure, functions, and evolutionary processes. This report shall include recommendations for changes in City financial, purchasing and accounting practices to: (a) fully encourage self-sufficiency and sustainability, (b) support the rights of natural communities and ecosystems within Santa Monica, and (c) minimize harm to natural communities and ecosystems outside Santa Monica. This report shall be updated biennially and posted on the City's website.

SECTION 13. PROHIBITIONS.

(a) It shall be unlawful for any law or regulation adopted by the State or federal government to violate the rights recognized by this Ordinance.

(b) It shall be unlawful for corporation and other business entities to violate the rights recognized by this Ordinance.

SECTION 14. CORPORATE PROTECTIONS.

(a) Within the City of Santa Monica, corporations shall not have the rights of "persons" to the extent such rights interfere with this Sustainability Bill of Rights, including but not limited to the following asserted rights:

(i) no corporation shall be afforded the privileges, powers or protections of the contracts clause or commerce clause of the United States Constitution, or rights secured by the First or Fifth Amendments to the Constitution or corresponding sections of the California Constitution to the extent such privileges, powers or protections interfere with this Sustainability Bill of Rights; and

(ii) corporations shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Santa Monica, or to challenge or overturn municipal ordinances or Charter provisions adopted by the City Council of the City of Santa Monica.

(b) Claims to “future lost profits” by corporations shall not be considered property interests under the law and thus shall not be recoverable by corporations seeking damages as a result of implementation or enforcement of this Sustainability Bill of Rights.

(c) It shall be unlawful for corporations to subvert or attempt to subvert the will of the people as expressed in this Sustainability Bill of Rights. Corporations shall not enjoy special privileges or powers under the law that subordinate the majority will of the people of the City.

(d) 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, that would violate the Prohibitions of this Ordinance or deprive any City resident(s), or natural communities and ecosystems within Santa Monica, of any rights, privileges, or immunities secured by this Sustainability Bill of Rights, the California Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Santa Monica.

SECTION 15. SELF-EXECUTION.

All rights delineated by this Sustainability Bill of Rights shall be self-executing and legally enforceable against all governmental entities and corporations and other business entities. City sustainability goals delineated within the Ordinance shall not be enforceable against governmental entities implementing those goals unless those entities fail to take reasonable actions toward attainment of those goals.

SECTION 16. ENFORCEMENT.

(a) The City, and any resident of the City, shall have standing to seek declaratory, injunctive, compensatory, and punitive relief for violations of the rights and prohibitions contained in this Sustainability Bill of Rights in any court of competent jurisdiction. City residents, and natural communities and ecosystems, shall be considered to be “persons” for purposes of the enforcement of the civil rights of affected residents, and natural communities and ecosystems within Santa Monica.

(b) Any person who brings an action to secure or protect the rights of natural communities or ecosystems within Santa Monica 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 used exclusively for the full and complete restoration of the natural community or ecosystem.

(c) A violation of the Prohibitions of this Ordinance is a municipal infraction and is subject to the fines or penalties provided in Chapter 1.08, Penalty Provisions. The City Council may change the amount of fines and penalties after the changes have been duly posted as required by law. Nothing in this Ordinance shall prevent the City from using one or more other remedies to address violations as established by the Santa Monica Municipal Code.

(d) In any action brought to enforce against violations of the rights and Prohibitions contained within this Sustainability Bill of Rights, a successful plaintiff shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees, if any, incurred during the action.

SECTION 17. PREEMPTION.

Any attempts to use state or federal levels of government – judicial, legislative, or executive - to preempt or overturn this Sustainability Bill of Rights, or parts of this Sustainability Bill of Rights, shall require the City Council to consider holding public meetings to explore the adoption of other measures that reflect and, as necessary, expand local sovereignty and the ability of City residents to protect their fundamental and inalienable right to govern themselves.

SECTION 18. SEVERABILITY.

If any provision of this Sustainability Bill of Rights is held invalid, such invalidity or unconstitutionality shall not affect other provisions or applications which can be given effect without the invalidated provision, and to this end, the provisions of this Sustainability Bill of Rights are severable.

SECTION 19. REPEALER.

All provisions of current City law inconsistent with these Ordinance provisions are repealed to the extent necessary to remedy the inconsistency.

SECTION 20. EFFECT.

This Ordinance shall be effective immediately upon its enactment.

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