

Community Bill of Rights Ordinance

ESTABLISHING A COMMUNITY BILL OF RIGHTS FOR THE PEOPLE OF BARRINGTON WHICH PROHIBITS ACTIVITIES AND PROJECTS THAT WOULD VIOLATE THE BILL OF RIGHTS, AND WHICH PROVIDES FOR ENFORCEMENT

Whereas, this community finds that commercial resource extraction is economically and environmentally unsustainable, in that it damages property values and the natural environment, places the health of residents at risk, threatens the quality and quantity of the natural water systems within the Town, while failing to provide real benefits to the people of this community.

Whereas, this community finds that commercial resource extraction violates the rights of Barrington residents, including our right to make decisions about what happens to the places where we live.

Whereas, this community finds that a change in the Town of Barrington's zoning ordinance in March, 2005 – which was changed to allow certain commercial resource extraction to occur in residential neighborhoods – places the environment at risk and violates the rights of residents.

Whereas, the people of Barrington possess the constitutional right to alter or abolish our current system of municipal governance if it either fails to recognize the authority of the people to self-govern or if it is rendered unable to secure the people's rights. [New Hampshire Constitution, Part First, Article 10.]

Whereas, the current system of municipal governance fails to recognize the self-governing authority of the people of Barrington because corporations may assert their "rights" to override our laws, our municipal government can be preempted by state or federal legislators and agencies, and our municipality is precluded from adopting laws which have not been authorized by the state.

Whereas, the operation of those legal doctrines renders the municipal government unable to protect and secure the rights of the people.

Whereas, the people of the Town of Barrington hereby declare that our current municipal system of governance fails to protect the rights of the community, and that we adopt this ordinance to modify our system of municipal governance from one that is rendered powerless, to one which recognizes our self-governing authority and which secures and protects our rights.

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

Section 1 – Definitions

(a) "Corporations," for purposes of this Ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, public benefit corporation, 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) "Ecosystem," shall include but not be limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, people, flora and fauna, soil-dwelling or aquatic organisms.

(c) "Resource extraction," shall include but not be limited to, the physical extraction of water, minerals, gravel, sand, or other minerals and mineral products. This phrase shall not include the removal of timber.

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

(a) Right to Access Water. All residents and ecosystems in Barrington possess a right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the Town.

(b) Right to Clean Air. All residents and ecosystems of the Town of Barrington possess a right to clean air untainted by toxins, carcinogens, particulates and other substances known to cause harm to health.

(c) Right to Peaceful Enjoyment of Home. Residents of Barrington possess a right to the peaceful enjoyment of our homes, free from interference, intrusion, nuisances or impediments to access and occupation.

(d) Rights of Ecosystems. Ecosystems, including but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess rights to exist and flourish within the Town of Barrington. Residents of the Town shall possess legal standing to enforce those rights on behalf of those ecosystems.

(e) Right to Scenic Preservation. All residents of the Town of Barrington possess a 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 a rural quality of life and economic sustainability for local businesses. Residents and local representatives have the authority to enact and enforce legislation that guarantees the exercise of local self-government that is protective of these rights.

(f) Governmental Legitimacy. All governments in the United States owe their existence to the people of the community which those governments serve, and governments exist to secure and protect the rights of the people and those communities. Any system of government which becomes destructive of those ends is not legitimate, lawful, or constitutional.

(g) Right to Local, Community Self-Government. The people of Barrington possess both a collective and individual right to self-government in our community, a right to a system of government which embodies that right, and the right to a system of government which protects and secures our human, civil and collective rights.

(h) Right to Assert the Right to Self-Government. The people of Barrington possess the right to use our local government to make law, and the making and enforcement of law by the people through a municipal corporation or any other institution shall not eliminate, limit, or reduce our sovereign right to local, community self-government.

(i) Rights of Natural Communities and Ecosystems. Natural communities and ecosystems within Barrington, including but not limited to, rivers, streams, and aquifers, possess the right to exist, flourish, and naturally evolve.

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

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

(a) It shall be unlawful within Barrington for any corporation or government to engage in resource extraction as defined by this Ordinance.

(b) It shall be unlawful for any corporation or government to violate the rights recognized and secured by this Ordinance.

(c) 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 New Hampshire Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Barrington.

Section 4 -- Exceptions.

The people of the Town of Barrington hereby allow the following exceptions to the Statement of Law contained within §3 of this Ordinance:

(a) Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Barrington and those utility corporations providing water, for the provision of water within the Town of Barrington.

(b) Corporations operating under valid and express contractual provisions in agreements entered into between residents of the Town of Barrington and those corporations for water, when the withdrawn water is used solely for on-site residential, household, agricultural or commercial facilities within the Town of Barrington, as long as such commercial facilities do not withdraw water for sale outside of the Town of Barrington, or purchase water withdrawn from the Town of Barrington for sale outside of the Town.

(c) The City of Rochester operating under valid and express contractual agreements entered into between that municipality and the Town of Barrington for water used solely for on-site residential, household, agricultural or commercial facilities within the City of Rochester, as long as such extraction does not withdraw water for sale outside of the City of Rochester.

(d) Sand or gravel extraction from existing, permitted gravel and sand extraction operations located within the Town of Barrington, which were operating prior to the date of enactment of this Ordinance.

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

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

(d) If the local government fails to enforce or defend this Ordinance, or a court nullifies this Ordinance due to a conflict with corporate powers, any person may enforce this Ordinance through direct action. If enforcement through direct action is commenced, this Ordinance 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 Ordinance.

Section 6 – Enforcement - Corporate Powers

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

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

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 Approval of Ordinance Changes

Any changes proposed to this Ordinance by the Barrington Board of Selectmen or by citizen petition shall require public notice of the changes, and a public meeting held for the purpose of discussing those changes, at least thirty (30) days prior to either the meeting of the Selectmen or appearance of the changes on the Town Meeting warrant. Any proposed changes to the Ordinance shall not be valid until ratified by a Town Meeting vote.

Section 9—People’s Right to Self-Government

Use of the courts or the New Hampshire legislature in attempts to overturn the provisions of this Ordinance shall require community meetings focused on changes to local governance that would secure the right of the people to local self-government.

Section 10 – State and Federal Constitutional Changes

Through the adoption of this Ordinance, the people of the Town of Barrington call for amendment of the New Hampshire Constitution and the federal Constitution to recognize a right to local self-government free from governmental preemption and nullification by corporate “rights.”

Section 11—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 12 - Repealer

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

ENACTED AND ORDAINED this ____ day of _____, 2015, by the Town of Barrington, New Hampshire.

By:
