

Town of Grafton. Grafton County. New Hampshire
Ordinance No. _____ of 2013

Right to A Sustainable Energy Future and Community Self-Government Ordinance

A RIGHTS--BASED ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF RESIDENTS AND ECOSYSTEMS OF GRAFTON, NEW HAMPSHIRE BY ESTABLISHING A BILL OF RIGHTS; BY RECOGNIZING THE RIGHT TO A SUSTAINABLE ENERGY FUTURE, AND BY PROHIBITING THE SITING OF NEW ENERGY PROJECTS THAT VIOLATE THE PEOPLE'S RIGHT TO A SUSTAINABLE ENERGY FUTURE.

Whereas, this Ordinance establishes a Bill of Rights which recognizes and secures the civil and political rights of Grafton residents; and

Whereas, this Ordinance recognizes and secures a right to a Sustainable Energy Future for Grafton residents; and

Whereas, this Ordinance then prohibits the land acquisition necessary for the construction of unsustainable energy systems, or land acquisition necessary to engage in construction or siting of any structure to be used in the operation of unsustainable energy systems, because such actions would violate the right of Grafton residents to a sustainable energy future; and

Whereas, this Ordinance removes legal powers and authority from corporations within the Town that are in violation of this ordinance, or which are seeking to engage in activities that are prohibited by this ordinance, in recognition that those legal powers are illegitimate and unjust, in that they place the rights of a corporate minority over the rights and political authority of a majority of Grafton residents, thereby nullifying those rights and that authority; and

Whereas, this Ordinance shall be known and may be cited as "The Town of Grafton's Right to a Sustainable Energy Future and Community Self-Government Ordinance;" and

Whereas, this Ordinance is enacted pursuant to the inherent right of the residents of Grafton to govern their own community, including, without limitation, the Declaration of Independence's declaration that governments are instituted to secure the rights of people, and the New Hampshire Constitution's recognition that "all government of right originates from the people, is founded in consent and instituted for the general good."

Section 1 – Findings and Intent

The residents of the Town of Grafton recognize that the current energy policies of the state of New Hampshire and the United States have long been directed by a small handful of energy corporations and their directors, and that centralized control over energy policies forces reliance upon unsustainable industrial-scale energy production, and denies the rights of residents to a sustainable energy future.

The residents of the Town of Grafton recognize that environmental and economic sustainability cannot be achieved if the rights of community majorities are routinely overridden by corporate minorities claiming certain legal powers that bar meaningful regulatory limitations and prohibitions concerning the generation, distribution, and transmission of unsustainable energy. The residents of the Town also recognize that sustainability cannot be achieved within a system of preemption which enables those corporations to use state governments to override local self-government, and which restricts municipalities to that lawmaking specifically authorized by state government.

The residents of the Town of Grafton believe that the protection of their health, safety, and welfare is mandated by the doctrine of the consent of the governed and their inherent right to local self-government. Thus, the Town of Grafton hereby adopts this rights-based Ordinance, which establishes a Bill of Rights for the residents and communities of the Town. This Bill of Rights includes the Right to a Sustainable Energy Future, prohibits corporations from acquiring land necessary for the construction of unsustainable energy systems or engaging in the construction or siting of any structure to be used in the operation of unsustainable energy systems, removes certain legal powers from energy corporations operating within the Town of Grafton that would violate the Right to a Sustainable Energy Future, and nullifies state laws, permits and other authorizations which interfere with the rights secured by this Ordinance.

Section 2 – Definitions

(a) “Corporations,” for purposes of this Ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, public benefit corporation, 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. This term shall not include the Town of Grafton municipal corporation, but shall include other municipal corporations, local and state authorities, and state and federal agencies.

(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) “Energy Systems” means those systems producing, generating, distributing, transmitting, or transporting energy and power.

(d) “Natural Communities” means communities of wildlife, flora, fauna, soil-dwelling, aerial, and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within a natural ecosystem.

(e) “Unsustainable energy systems” means those systems that are controlled by state and federal energy policies, rather than community controlled energy policies; hydroelectric power and industrial scale wind power when it is not locally or municipally owned and operated; energy systems using fossil fuels, including but not limited to coal, natural gas, petroleum products, nuclear and radioactive materials, and other fuel sources that are non-renewable, or which produce toxins and substances that cause injury to humans or natural communities and ecosystems, or that are in violation of residents’ right to a sustainable energy future. The phrase shall also include any energy system which violates the rights secured under this Ordinance or under other laws. The term shall not include 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 – Rights of Residents and the Natural Environment

(a) Right to a Sustainable Energy Future. The residents of Grafton 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.

(b) Right to Scenic Preservation. All residents of the town of Grafton 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 Water*. All residents, natural communities and ecosystems in Grafton possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the Town.

(d) *Rights of Natural Communities*. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the Town of Grafton. Residents of the Town shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(e) *Right to Self-Government*. All residents of Grafton possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

(f) *People as Sovereign*. The Town of Grafton shall be the governing authority responsible to, and governed by, the residents of the Town. Use of the "Town of Grafton" municipal corporation by the sovereign people of the Town to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and infeasible right to self-governance in the community where they reside.

(g) *Rights as Self-Executing*. All rights delineated and secured by this Ordinance shall be self-executing and these rights shall be enforceable against corporations, as defined within this Ordinance.

Section 4 -- Statements of Law -- Prohibitions Necessary to Secure Bill of Rights' Protections

(a) It shall be unlawful within the Town of Grafton for a corporation or any person using a corporation, 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.

(b) No permit, license, privilege, eminent domain authority, 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, which would violate the prohibitions of this Ordinance or deprive any Town resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the New Hampshire Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Grafton.

Section 5—Enforcement

(a) Any person, corporation, or other entity that violates any prohibition 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. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

(b) The Town of Grafton may enforce this Ordinance through an action brought in a court of competent jurisdiction. In such an action, the Town of Grafton shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any Town resident shall have the authority to enforce this Ordinance through an action brought in a court of competent jurisdiction. In such an action, the resident shall be entitled to damages and recovery of all costs of litigation, including, without limitation, expert and attorney's fees.

(d) Any person who brings an action to secure or protect the rights of natural communities or ecosystems within the Town of Grafton 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 paid to the Town of Grafton or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

(e) Corporations in violation of the prohibitions established by this Ordinance, and corporations seeking to violate the prohibitions established by this Ordinance, shall not have the rights of "persons" nor access to legal protections afforded to persons by the United States and New Hampshire Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the New Hampshire Constitution, nor shall those corporations be afforded the protections of the Commerce or Contracts clauses within the United States Constitution or corresponding sections of the New Hampshire Constitution.

(f) Corporations engaged in activities prohibited by this Ordinance, and corporations seeking to engage in activities prohibited by this Ordinance, shall not possess the authority or power to enforce State or federal preemptive law against the people of the Town of Grafton, or to challenge or overturn municipal ordinances adopted by the Town of Grafton, when that enforcement or challenge interferes with the rights asserted by this ordinance, or interferes with the authority of the municipality to protect the health, safety, and welfare of its residents.

Section 6 – Sustainable Energy Policy

The Town shall implement a Sustainable Energy Policy following the adoption of this Ordinance 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.

Section 7—Effective Date and Existing Permit holders

This Ordinance shall be effective five (5) days after the date of its enactment, regardless of the date of any applicable local, state, or federal permits.

Section 8—People's Right to Self-Government

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the Town of Grafton to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Ordinance or other levels of government used to intimidate the people of the Town of Grafton or their elected officials.

Section 9 – New Hampshire Constitutional Changes

Through the adoption of this local law, the people of the Town of Grafton call for changes to the New Hampshire Constitution to secure within it explicitly a community right to local self-government that cannot be preempted by the State if the community's laws enforce rights or standards more protective of the health, safety, and welfare of the people of Grafton and the natural environment, communities, and ecosystems. The people of Grafton also call for state constitutional changes that explicitly elevate community rights above corporate property rights, and that recognize the rights of nature enforceable by the residents of a community.

Section 10—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 Town of Grafton 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 11 - Repealer

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

ENACTED AND ORDAINED this 12 day of March, 2013, by the Town of Grafton, in Grafton County, New Hampshire.

By: *Boris J. Haubrich*

Town Clerk