

LOCAL CONTROL AND WASTE REDUCTION ORDINANCE

Section 1 Name

The name of this Ordinance shall be the “Local Control and Waste Reduction Ordinance.”

Section 2 Purpose

An Ordinance to protect the health, safety, and general welfare of the citizens, community and environment of the town of Bethlehem by prohibiting persons from using corporations or syndicates to engage in certain waste storage, “beneficial use” or waste disposal activities, by prohibiting certain corporations from claiming legal rights and protection, by providing for development of a Town waste policy, and by providing for enforcement and penalties for violations of this ordinance.

Section 3 Goals

Assert the rights of the People to a healthy, clean environment, and of the environment to exist and flourish, and impose penalties for violations of these rights.

Recognize that Regulatory Laws are written and advanced on behalf of the regulated industries, that they fail to protect the People and the environment from harms, that they leave the People with minimal power to merely *limit the degree* of damage such behavior inflicts and that Regulatory Laws deny communities the right to simply say “no” to destructive corporate activities.

Recognize that current local, state and national waste policies are unsustainable and establish a community waste policy based on reports from the Citizen’s Advisory Group on Recycling, with targeted but non-mandatory goals for recycling, reuse and reduction of waste by the community

Assert the legitimate authority of the People of Bethlehem to control the storage and dumping of waste in the Town by exercising their inalienable right to local self-government in enacting this Ordinance.

Assert that state and federal laws that usurp the right of the People to make local governing decisions on issues which directly affect their community, environment, quality of life, and the health, safety and welfare of future generations are unjust and illegitimate.

Assert that corporations being used to traffic in waste within the Town are subordinate to the People of Bethlehem, that corporations may not exercise privileges of legal “personhood” or wield the constitution and the law against the People and community government of the Town of Bethlehem in order to deny their local self-governing authority.

Prohibit waste hauling corporations from storing and dumping an array of waste materials within the Town of Bethlehem, and impose penalties for such violations.

Prohibit anyone from using or assisting a corporation to violate the provisions of this ordinance, within the Town of Bethlehem, and impose penalties for violating these prohibitions.

Section 4 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 the 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 People of the Town of Bethlehem and the Bethlehem Select Board 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.

A ballot vote that asks the People of Bethlehem whether they should exercise the rights and authorities recognized in the New Hampshire Constitution, Part First, Article 10, (see Section 10 of this ordinance) shall be brought before them at the next opportunity following any attempt to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, and specific options, based on the outcome of that vote, shall be brought before the People in like manner, without delay, so that they shall decide what action to take. It is declared that those other measures may legitimately include the partial or complete separation of the Town from the other units and levels of government that attempt to preempt, amend, alter, or overturn this Ordinance.

Section 5 Findings

This Ordinance recognizes that corporations engaged in certain types of waste storage, and/or waste disposal within the Town constitute a threat to the health, safety, welfare, and rights of the residents of the Town of Bethlehem due to the limited liability of those corporations, which may prevent full recovery for damages in the event of injuries caused to Town residents. That limited liability privilege shields and protects the individuals operating the corporation, and thus serves to thwart any deterrent effect from lawsuits brought to remedy injuries caused by those persons using the corporation to engage in waste trafficking.

The Town of Bethlehem declares that persons using corporations to store or dump or engage in waste trafficking, “beneficial reuse” of “refuse”, “solid waste”, hazardous material, sewage, sludge, construction and demolition (C&D) waste, radioactive material, and other waste deemed by the Town to be hazardous, toxic, or dangerous, place the residents of the Town at increasing risk, due to the harmful and dangerous composition of those wastes. The Town of Bethlehem also declares that corporations, engaging in waste disposal in any neighboring municipality, that cause harm to residents of the Town of Bethlehem, shall be held strictly liable for the migration of toxic and hazardous contaminants across municipal borders. The Town of Bethlehem also declares that “waste management,” land applied sewage sludge or “biosolids,” waste disposal and mine “reclamation” corporations increasingly determine waste policy in the State of New Hampshire, and that the Town must take affirmative steps to subordinate the powers of those corporations to the will of the majority within the Town of Bethlehem.

Section 5.1 Declaration of Unsustainability The People of the Town of Bethlehem recognize that the current waste policy of New Hampshire and the United States – based on landfilling or incineration of unnecessary, excessive, or toxic substances – is inherently destructive to the health of human and natural communities, requires tremendous infrastructure expenditures, results in land, air and water pollution damage, contributes to global warming, and the various emissions of pollution are harmful to all life. The People of the Town of Bethlehem recognize that the waste policy of New Hampshire and the United States has long been directed by a handful of corporations and the directors of those corporations. That control, in turn, has denied the ability of people and communities over the past century to create and implement their own sustainable policies – to make sane, logical, and appropriate decisions about waste reduction investments and technologies.

Section 5.2 Declaration of Zero Waste Policy for the Town of Bethlehem The People of the Town of Bethlehem declare that they reject the current unsustainable and anti-democratic waste policy enabled and regulated by the State of New Hampshire and the United States, and therefore, through this Ordinance, adopt a sustainable, locally-defined waste policy based on a progression toward a zero waste reality. Investments in waste handling, reduction, transportation, and reuse within the Town of Bethlehem shall be guided by that principle, and that principle shall serve as the foundation for the development of an annual Zero Waste Plan for the Town of Bethlehem.

Section 5.3 Declaration of Zero Waste Goals Waste generation within the Town of Bethlehem shall be assessed for opportunities to eliminate, reduce, reuse, or recycle materials generated locally and currently sent to landfills. These local waste reduction activities alone shall be excepted out of the prohibition on “beneficial use” of waste within the Town. Waste generation shall be reduced by 10% during each six year period, through the installation and use of new waste management programs, until the residents and businesses within the Town/City have achieved a zero waste capability as defined by the Town of Bethlehem.

In order to meet these target goals for the Town of Bethlehem’s waste policy, the Select Board shall direct the Citizen’s Advisory Group on Recycling to gather information to establish baseline starting points for measuring local waste production within 45 days of passage of this Ordinance. Failure to meet these target goals shall not negate or limit the implementation or enforcement of this Ordinance.

Section 6 Interpretation

Anyone interpreting, implementing, or applying this Ordinance, shall give priority to the Findings stated in §5 over such accounting and business terms characterized as “economy,” “efficiency,” and “scheduling factors.”

Section 7 Statements of Law

Section 7.1: It shall be unlawful for any person, corporation, or other entity to use a corporation or syndicate to engage in waste trafficking, within the Town of Bethlehem.

Section 7.2: It shall be unlawful for any person to assist a corporation to engage in waste trafficking, within the Town of Bethlehem

Section 7.3: It shall be unlawful for any corporation to engage in waste trafficking, within the Town of Bethlehem.

Section 7.4: It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in waste trafficking, within the Town of Bethlehem.

Section 7.5: Within the Town of Bethlehem, corporations shall not be “persons” under the United States or New Hampshire Constitutions, or under the laws of the United States, New Hampshire, or Town of Bethlehem, and so shall not have the rights of persons under those constitutions and laws. Nor shall they be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions from the New Hampshire Constitution, within the Town of Bethlehem, nor shall those corporations possess the authority to enforce State or federal preemptive law against the people of the Town of Bethlehem. Within the Town of Bethlehem, corporations engaged in waste trafficking shall be “state actors,” illegitimately endowed with privileges, rights and powers by the state and federal governments and liable for any deprivation or denial of rights within the Town. Additionally, within the Town of Bethlehem, corporate claims to “future lost profits” as a result of the enactment, implementation or enforcement of this Ordinance shall not be considered property interests under the law, and thus, shall not be recoverable by corporations seeking those damages.

Section 7.6: All residents of the Town of Bethlehem possess a fundamental and inalienable right to be integral and part of a healthy environment and natural ecosystem, which includes the right to unpolluted air, water, soils, flora, and fauna. All residents of the Town possess a fundamental and inalienable right to the integrity of their bodies, and thus have a right to be free from unwanted invasions of their bodies by pollutants. The residents of the Town of Bethlehem possess a fundamental and inalienable right to self-government and a republican form of government.

Section 7.7: Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town of Bethlehem. It shall be unlawful for any corporation engaged in waste trafficking, or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems. The Town of Bethlehem, along with any resident(s) of the Town, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Town, regardless of the relation of those natural communities and ecosystems to Town residents or the Town itself. Town 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 7.8: Any corporation engaging in, or planning to engage in, waste trafficking in violation of this Ordinance shall not possess limited liability attributes within the Town of Bethlehem for the purposes of the enforcement of this Ordinance. Directors, officers, owners, and/or managers of that corporation shall be personally liable for violations of this Ordinance.

Section 7.9: Persons using corporations to engage in the types of waste trafficking addressed by this Ordinance in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Town of Bethlehem from those activities, and for all harms caused to ecosystems and natural communities within Town of Bethlehem.

Section 7.10: 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 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 Bethlehem. Additionally, 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 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 liable to the party injured and shall be responsible for 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 Town of Bethlehem for restoration of those natural communities and ecosystems.

Section 7.11: The Town of Bethlehem shall be the governing authority responsible to and governed by the residents of the Town. Use of the "Town of Bethlehem" municipal corporation by the sovereign people within the Town's boundaries 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 indefeasible right to self-governance in the community where they reside.

Section 8 Enforcement

Section 8.1: The Town of Bethlehem shall enforce this Ordinance by an action brought before a Grafton County Superior Court in the same manner provided for the enforcement of summary offenses under the New Hampshire Rules of Criminal Procedure.

Section 8.2: Every person, persons, firm or corporation violating any of the provisions of this ordinance shall be fined \$1000 per violation.

Section 8.3: 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 8.4: The Town of Bethlehem may also enforce this Ordinance through an action in equity brought in the Grafton County Superior Court. In such an action, the Town of Bethlehem shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 8.5: All monies collected for violation of this Ordinance shall be paid to the Town of Bethlehem.

Section 8.6: Any person, corporation, or other entity that violates, or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from engaging in business in the Town of Bethlehem. 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 8.7: Any Town resident(s) shall have the authority to enforce any section of this Ordinance through an action in equity brought in the Grafton County Superior Court. In such an action, the resident(s) shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 9 Civil Rights Enforcement

Section 9.1: Any person acting under the authority of a permit issued by the Department of Environmental Services, any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, who deprives 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 liable to the party injured and shall be responsible for 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 Town of Bethlehem for restoration of those natural communities and ecosystems.

Section 9.2: Any Town resident(s) 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, or Town residents, as recognized by the provisions of this Ordinance.

Section 10 Authority This Ordinance is adopted and enacted pursuant to the right of self-government of the residents of Bethlehem, and by the authority granted to the Town by all relevant state and federal laws including, but not limited to the following:

§ The Declaration of Independence, which declares that governments are instituted to secure people's rights and that government derives its just powers from the consent of the governed;

§ The Ninth Amendment to the United States Constitution, which declares, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”;

§ The Tenth Amendment to the United States Constitution, which declares, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”;

§ The New Hampshire Constitution, Part First, Article 1, which declares that “All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good”;

§ The New Hampshire Constitution, Part First, Article 2, which declares in part that “All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending of life and liberty...”;

§ The New Hampshire Constitution, Part First, Article 3, which declares in part that “When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void”;

§ The New Hampshire Constitution, Part First, Article 7, which declares that “The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled”;

§ The New Hampshire Constitution, Part First, Article 8, which declares that “All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted”;

§ The New Hampshire Constitution, Part First, Article 10, which declares that “Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.”

Section 11 Definitions

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

“Beneficial use or reuse” - means the use or reuse of some forms of refuse or solid waste as defined by the New Hampshire Department of Environmental Services. This definition shall exclude waste reduction activities such as reuse, or recycling of materials generated locally as part of the Town of Bethlehem Zero Waste Plan.

“Corporation” - Any corporation organized under the laws of any state of the United States or under the laws of any country, excluding the municipal corporation known as the “Town of Bethlehem”. 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.

“Department” - The New Hampshire Department of Environmental Services

“DES” - The New Hampshire Department of Environmental Services

“Engage in the disposal” - a phrase that includes, but is not limited to, any activities associated with the disposal of wastes within the Town of Bethlehem.

“Hazardous waste” - a solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes:

- 1) Which, because of either quantity, concentration, or physical, chemical, or infectious characteristics may:
 - a) Cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or
 - b) Pose a present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of or otherwise mismanaged.
- 2) Or which has been identified as a hazardous waste using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to, those which are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Federal Atomic Energy Act of 1954, as amended.

“Infectious waste” – waste which is generated in the diagnosis, treatment, immunization or autopsy of human beings or animals, in research pertaining thereto, in the preparation of human or animal remains for interment internment or cremation, or in the production or testing of biological.

“Ordinance” - Local Control and Waste Reduction Ordinance

“Person” - a natural person

“Radioactive material” - materials which spontaneously emit alpha or beta particles or photons (gamma radiation) in the process of decay or transformation of the atom’s nucleus. This term shall include, but not be limited to, source, special nuclear or byproduct material as defined by the Federal Atomic Energy Act of 1954.

“Recycle” - after-use collection and re-introduction of discarded materials as raw materials for use in manufacture of new environmentally safe products.

“Refuse” - includes any waste product, solid or having the character of a solid rather than a liquid.

“Sewage Sludge” or “Sludge” - the solid, semisolid and liquid material produced by water and wastewater treatment processes. It includes industrial sludge and sludge mixtures, as well as residue from a municipal sewage collection and treatment system, and liquid or solid sludge and other residue from septic and holding tank pumpings from commercial, industrial, or residential establishments. The term includes material derived from sewage sludge as well as material referred to as “biosolids.”

“Solid waste” - includes solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining, and agricultural operations; and sludge from an industrial, mining or agricultural water supply treatment facility, waste water treatment facility or air pollution control facility, if not hazardous.

“Syndicate” - any limited partnership, limited liability partnership, business trust, or Limited Liability Company organized under the laws of any state of the United States or any country. A syndicate shall not include general partnerships, except general partnerships in which corporations or other limited liability business entities are partners.

“Town” - Town of Bethlehem in Grafton County, New Hampshire, its Town Selectboard, or its representatives or agents. The Town Selectboard or its representatives or agents act as the governing authority of the Town of Bethlehem in Grafton County, New Hampshire, which is responsible to and governed by the sovereign authority of the people living there, who at all times enjoy and retain an inalienable and indefeasible right to self-governance through their use of the municipal corporation known as the "Town of Bethlehem," to make law that benefits the sovereign people.

“Waste Trafficking” - the storage, dumping, landfilling, beneficial use or reuse, land application, or disposal of refuse, solid waste, hazardous waste, infectious waste, sewage sludge or radioactive material as those terms are defined within the provisions of this Ordinance. Waste generated and temporarily stored within the Town of Bethlehem and waste transported through but not stored or deposited in any form within the Town of Bethlehem is excepted from this definition.

“Waste generated and temporarily stored” - Waste that is generated exclusively in the Town of Bethlehem and deposited in a container for no longer that 30 days.

Section 12 Administration The Bethlehem Select Board shall administer this Ordinance.

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 People of the Town of Bethlehem hereby declare 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 People of the Town of Bethlehem are hereby repealed, but only to the extent necessary to remedy the inconsistency.

Section 15 Effect In order to extend the courtesy of time to our neighboring communities to make other waste disposal arrangements this Ordinance shall take effect 60 days after its enactment.