

**Proposal for a
Bellingham Community Bill of Rights
to be adopted by citizens' initiative**

Whereas, in America we have a tradition of deciding for ourselves – and for our children;

Whereas, the residents of the City of Bellingham possess the inherent and inalienable right to govern their own community, on the basis, without limitation, of the statement within the Declaration of Independence that governments are instituted to secure the rights of people, and of the Washington Constitution's recognition that "All political power is inherent in the people;"

Whereas, in the words of the Declaration of Independence, "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

Whereas, the assertion of constitutional rights, including civil rights, by the legal constructions known as Corporations has fundamentally unbalanced our system of government, and the people of Bellingham desire to restore a balanced and democratic system of government;

Whereas, the use of coal for energy production has furthered global climate change, with that climate change threatening the very survival of human and natural communities;

Whereas, the State of Washington has acknowledged the threat from the use of coal, and therefore decided last year to adopt the Coal-Free Future for Washington legislation which will close the last remaining coal-burning power plant in Washington State ;

Whereas, the State of Washington and the United States hold a public trust from the people of the State of Washington and the people of the United States under which they are obliged to protect the climate of the State of Washington and of the United States from climate change, and the State of Washington and the United States have failed to act in accordance with the public trust, and the people of Bellingham find it necessary to act on their own behalf;

Whereas, the people of Bellingham find it necessary to reduce the progress of climate change by creating a new structure of law, which recognizes that the residents and ecosystems of Bellingham have the right to a healthy, natural climate unaltered by the transporting, handling and burning of coal, and which recognizes the rights of ecosystems to exist and flourish;

Whereas, that new structure of law is embodied in this ordinance, which recognizes a Bill of Rights for the residents and ecosystems of Bellingham, and which bans activities related to the transportation of coal through the municipality as a violation of those rights;

Whereas, existing concepts of law such as nuisance and toxic trespass may be expanded to support the right of the people of Bellingham to protect themselves from activities related to the transportation of coal through the municipality;

Whereas, since Corporations engaged in the extraction, distribution, and use of coal routinely use corporate “powers” and “rights” to overturn community lawmaking focused on building sustainability, this ordinance removes legal “powers” and “rights” from those Corporations to ensure that the powers and rights of the community are superior to the “powers” and “rights” claimed by those Corporations;

Whereas, certain distant corporate operators desire to mine coal in massive quantities in Wyoming and Montana, to transport such coal by rail from east to west across Washington State, from south to north in Western Washington, and through the center of the City of Bellingham, to build an ecologically destructive coal port at Cherry Point just north of Bellingham, to transport such coal in massive freighters across Puget Sound and the Pacific Ocean to Asia, where it will be burned in power plants, increasing the rate of global climate change (all the foregoing being referred to as the “Proposed Corporate Coal Project”);

Whereas, the Proposed Corporate Coal Project will cut off the city from its waterfront, impeding plans for development and for opening the waterfront for public enjoyment, and cutting out the resulting jobs;

Whereas, the adoption of this ordinance by the people of Bellingham is a necessary first step, but is insufficient by itself either to stop the coal trains on all their possible routes or the coal port or to bring about the structural legal changes that are necessary, and the people of Bellingham stand ready to collaborate with the people of Whatcom County and Washington State and beyond in order to obtain these ends;

Now, therefore, the people of the City of Bellingham hereby adopt this Ordinance, which shall be known and may be cited as “The Bellingham Community Bill of Rights.”

Section 1—Findings and Intent

The people of Bellingham believe that the protection of human and natural communities from environmental threats constitutes the highest and best use of the police powers that this municipality possesses. We also believe that local legislation that embodies the interests of the community is mandated by the doctrine of the consent of the governed and the right to local, community self-government. Thus, we hereby adopt this ordinance, which establishes a Bill of Rights for the residents, natural communities and ecosystems of the City, bans activities related to the transportation of coal within the City, and nullifies state and federal laws, constitutional provisions, permits, and other authorizations which interfere with the rights secured by this ordinance.

The people of Bellingham recognize that a healthy, natural climate - and environmental and economic sustainability - cannot be achieved if the rights of municipal majorities are routinely overridden by corporate minorities claiming “powers” and “rights”. The people of Bellingham also recognize that sustainability cannot be achieved within a system of preemption

which enables those corporate decision-makers to wield state and federal governmental power to override local self-government, and which restricts municipalities only to that lawmaking specifically authorized by state government.

The people of Bellingham are unwilling to accept an economic system in which communities, people and eco-systems bear the massive costs of corporate operations in the social, ecological and economic spheres, and in which such a system is supported by the existing structure of law. Conventional economic ideology that characterizes these costs as “externalities,” and then proceeds to ignore them, is inadequate for the needs of society and for ecosystems.

The people of Bellingham find that the harms arising from the Proposed Corporate Coal Project are numerous and affect every sphere of life. Among them are:

- 1) Reduced access to the Bellingham waterfront, to the waterfront at the proposed coal port and to the waterfront everywhere where the trains will run along the shore
- 2) Destruction of the peace of the parks along the waterfront, including Zuanich Park, Boulevard Park, Port of Bellingham Marine Park, Teddy Bear Cove, and Larrabee State Park.
- 3) Not being able to proceed with the community's vision for waterfront redevelopment (most especially of the Georgia Pacific site, now largely empty, and on the other side of the tracks from downtown Bellingham
- 4) Not being able to preserve the beauty of the waterfront
- 5) Not being able to use existing rail facilities for other valuable uses, e.g. passenger trains.
- 6) Noise
- 7) Pollution of air, land and water from coal dust and freighter diesel exhaust
- 8) Health threats, including without limitation
 - a) Impaired pulmonary development in adolescents;
 - b) Increased cardiopulmonary mortality and all-cause mortality;
 - c) Measurable pulmonary inflammation;
 - d) Increased severity and frequency of asthma attacks, ER visits, and hospital admissions in children;
 - e) Increased rates of myocardial heart attacks in adults;
 - f) Increased risk of cancer;
 - g) Increased risk of chronic bronchitis;
 - h) Increased risk of emphysema;
 - i) Increased risk of pulmonary fibrosis; and
 - j) Environmental contamination through the leaching of toxic heavy metals;all as documented by Whatcom Docs.
- 9) Interruption of ambulances, fire trucks and police
- 10) Interruptions for people and local businesses
- 11) Loss of opportunity for local businesses
- 12) Safety threats

- 13) Threats to wildlife
- 14) Loss of property values near the tracks
- 15) Ecological harm to air, land and water in the vicinity of the proposed port at Cherry Point
- 16) Harm to the fisheries in the vicinity of Cherry Point
- 17) Species extinction
- 18) Multifarious harm to the communities in the vicinity of Cherry Point, such as Birch Bay, Custer, Ferndale, the Lummi Nation, and Blaine
- 19) Ecological harm in Puget Sound
- 20) Safety threats from increasingly dense freighter traffic in Puget Sound and from increasingly large freighters
- 21) Ocean acidification
- 22) Furthering global climate change through the burning of the coal in Asia, which will cause health and other impacts to the residents and ecosystems of the City of Bellingham and around the world.

The people of Bellingham find that global climate change poses a significant threat to the health, safety, and welfare of the human and natural communities within the City, and that those communities possess a right to a healthy, natural climate unaltered by coal emissions, and that certain proposed corporate activities violate that right.

The people of Bellingham recognize that merely regulating activities related to the transportation of coal through the City enables and legalizes these harms to occur, thus violating the rights of residents and natural communities.

Section 2—Definitions

- (a) “City” and “Bellingham” mean the City of Bellingham, a Washington municipal corporation.
- (b) “Coal” shall mean any combustible sedimentary rock.
- (c) “Corporation(s)” for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized for profit under the laws of any state of the United States or under the laws of any country, and any other for-profit entity that possesses state-conferred limited liability attributes for its owners, directors, officers, and/or managers.

Section 3---Statements of Law – Rights of Bellingham Residents and the Natural Environment

- (a) *People as Sovereign.* The municipal corporation known as the City of Bellingham shall be the governing authority responsible to, and governed by, the residents of the City. Use of the City of Bellingham municipal corporation by the sovereign people of Bellingham

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.

- (b) *Right to Self-Government*. All residents of the City of Bellingham 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.
- (c) *Rights of Natural Communities*. Natural communities and ecosystems, including, but not limited to, flora, fauna, the atmosphere, soils, wetlands, bays, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Bellingham. Residents of the City of Bellingham, acting individually or collectively, or the City itself, or the City acting together with one or more residents, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.
- (d) *Right to a Sustainable Energy Future*. All residents, natural communities, and ecosystems in the City of Bellingham possess a right to a sustainable energy future and a right to adopt laws and policies to secure this future. That right shall include the authority to require the development, production, and use of energy from renewable fuel sources.
- (e) *Right to Climate*. All residents, natural communities and ecosystems in the City of Bellingham possess a fundamental and inalienable right to a healthy, natural climate.
- (f) *Rights as Self-Executing*. All rights delineated and secured by this ordinance shall be self-executing and these rights shall be enforceable against Corporations, in addition to governmental and other public entities.

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

- a) It shall be unlawful for any Corporation to engage in the transportation of coal through the City of Bellingham, whether by road or railway. For purposes of this Section 4, a Corporation will be considered to be "engaged in the transportation of coal" if it transports coal through Bellingham, or if it owns coal being transported through Bellingham.
- b) Corporations in violation of the prohibition against engaging in coal transportation or seeking to engage in actions that would violate such prohibition shall be deemed not to possess rights as legal "persons" under the United States and Washington Constitutions, and shall not be deemed to possess any other constitutional rights.
- c) Corporations engaged in the transportation of coal through the City of Bellingham shall not possess the authority or power to enforce State or federal preemptive law against the

people of the City of Bellingham or to challenge or overturn municipal ordinances, 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.

- d) No permit, license, privilege or charter issued by any instrumentality of a state or the federal government or any international body, any commission, or any municipality to any person or any Corporation, or any director, officer, owner, or manager of a Corporation, which would violate the prohibitions of this Ordinance or deprive any Bellingham resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Washington Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Bellingham.

Section 5—Enforcement

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

(b) Any resident or residents of the City of Bellingham shall have the authority to enforce this Ordinance through an action for damages and/or in equity brought in a court of competent jurisdiction. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any action brought to remedy the violation of the rights of natural communities or ecosystems shall list the natural community or ecosystem as a plaintiff in the action, damages sought must bear a relationship to the damage inflicted upon the natural community or ecosystem, and awarded damages must be payable to the municipality for the restricted use of repairing the natural community or ecosystem.

(d) Right to Know. Any corporation planning to engage in activities that may be prohibited by this ordinance shall disclose those activities to the City of Bellingham at least sixty (60) days prior to engaging in those activities. That disclosure, which shall be provided in writing to the City of Bellingham, shall explain why the proposed activities do not violate the provisions of this ordinance. Upon written request of a resident or residents or of the City, any corporation engaging in one or more of the activities described in Section 4 a) will disclose such information concerning such activities as such written request shall have specified, such disclosure to occur within 30 days of the date of the request. For purposes of this Section 5 d), "resident" includes a non-profit corporation controlled by one or more human residents of the City.

Section 6—Effective Date and Existing Permitholders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply in accordance with its terms regardless of the date of any applicable state or federal permits.

Section 7—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. If other units or levels of government attempt to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, the Bellingham City Council shall hold public meetings that explore the adoption of other measures that provide for adequate local control and the ability of residents to protect their fundamental and inalienable right to self-government, including without limitation the amendment of the City Charter.

Section 8 – State and Federal Law

By the adoption of this local Bill of Rights by this municipality, the people call for changes to state and federal law that would result in the recognition of a fundamental and inalienable right to community self-government free of corporate control throughout this State and the United States. The people also declare their support for changes to state and federal law that would eliminate corporate constitutional rights and powers that currently interfere with, and prevent, the exercise of local self-governance. Those rights and powers include corporate authority to preempt community lawmaking, the “right” to obtain permits or licenses contrary to local law-making, corporate “rights” as “persons” under the State and federal constitutions, and other corporate “rights” under the State and federal constitutions.

Section 9—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 City of Bellingham hereby declare that in the event of such a decision, and the determination that the court’s ruling is legitimate, they would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 10—Repealer

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

ENACTED AND ORDAINED this ____ day of _____, 2012, by the people of Bellingham.